139-569

139-569

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1267.

THE INTER-STATE LAND COMPANY, APPELLANT,

vs.

THE MAXWELL LAND GRANT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED SEPTEMBER 4, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1267.

THE INTER-STATE LAND COMPANY, APPELLANT,

vs.

THE MAXWELL LAND GRANT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Exhibit No. 1—Articles of incorporation of the Inter-State Land Company of Colorado	23	16
No. 2—Petition of Miranda and Beaubien, January 8, 1841, and order thereon	24	17
Petition of Miranda and Beaubien, February 12, 1843, and order thereon	25	19
Petition of Charles Beaubien, April 13, 1844, and proceedings thereon	27	20
No. 3—Petition and grants to Royuela and Beales	30	24
No. 4—Deed of Royuela to Beales	33	28
No. 5—Will of John C. Beales	34	29
No. 6—Letters of administration on Beales' estate	35	30
No. 7—Deed from Beales' heirs to Childs	36	32
No. 8—Deed from Childs to Inter-State Land Company	38	35
Subpœna	40	36
Marshal's return	41	37
Demurrer to bill of complaint	42	38
Opinion of Judge Brewer on demurrer	43	39
Order sustaining demurrer	60	49
Order granting leave to amend bill	61	49
Amendment to bill	61	49
Demurrer to amended bill	64	51
Final decree	65	52
Allowance of appeal	65	52
Bond on appeal	66	53
Clerk's certificate	67	54

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 28, 1891.

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 20th day of December, A. D. 1888, came the Inter-State Land Company by John L. Jerome, its solicitor, and filed in said court its bill of complaint, and sued out of and under the seal of said court a subpœna in chancery against the Maxwell Land Grant Company.

And the said bill is in words and figures as follows, to wit:

Bill of Complaint.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In Equity. In the Circuit Court.

To the judges of the circuit court of the eighth judicial district of the United States of America, sitting in and for the district of Colorado:

THE INTER-STATE LAND COMPANY, Complainant,
vs.
THE MAXWELL LAND GRANT COMPANY, Defendant.

Your orator, the Inter-State Land Company, for its original bill of complaint, shows to the court—

I.

That the complainant is a corporation duly organized, constituted, and existing under and by virtue of the laws of the State of Colorado, with articles of incorporation duly executed and filed in the office of secretary of state of Colorado on the 22nd day of November, A. D. 1886, and recorded at page 30, in Book 15, in the office of said secretary of state, as the same will more fully appear by a copy of the said articles of incorporation, hereto annexed as Exhibit No. 1.

2 That by virtue of said articles of incorporation your orator is entitled and duly empowered to contract and be contracted with, to sue and be sued, to plead and be impleaded, in all courts and places whatsoever.

That the object for which your orator, the said Inter-State Land Company, was incorporated and duly empowered is to buy, lease, own in fee, and sell real estate in said Colorado and other States and Territories in the United States, and to do everything pertaining to such business.

II.

Your orator further shows to the court that the defendant, The Maxwell Land Grant Company, is a corporation duly organized, constituted, and existing under and by virtue of the laws of the Kingdom of the Netherlands and doing business in the United States of

America, and more particularly in the State of Colorado and the Territory of New Mexico, pursuant to the laws of said State and Territory.

That its principal places of doing business in the United States are at Cimarron, in the Territory of New Mexico, at Pueblo, in the State of Colorado, and at Chicago, in the State of Illinois.

That from about the — day of ——, 188–, the said Maxwell Land Grant Company has been and still is a body corporate, duly empowered to own, hold, and enjoy real estate in fee and otherwise, and to sell, lease, convey, use, and occupy the same, and by and in its said corporate name to sue and be sued, plead and be impleaded, in all courts and places whatsoever.

III.

Your orator further shows that on or about the 8th day of January, 1841, Gaudalupe Miranda and Charles Beaubien, citizens of the Republic of Mexico, petitioned the Governor of New Mexico for a grant of public lands, setting forth in said petition the locality
3 where the said grant was desired by the following description, to wit:

"The tract of land we petition for to be divided equally between us commences below the junction of the Rayado river with the Colorado and on a direct line towards the east to the first hills and from there running parallel with said river Colorado in a northerly direction to the opposite point of the Una de Gato; following the same river along the same hills, to continue *of* the east of the said Una de Gato river to the summit of the table land (mesa); from which turning northwest, to follow along said summit until it reaches the top of the mountain which divides the waters of the rivers running towards the east from those running towards the west, and from thence following the line of said mountain in a southerly direction until it intersects the first hills south of the Rayado river, and following the summit of said hills towards the east to the place of beginning."

And thereupon Armijo, the Governor, duly acceded to the request of the said petitioners, Miranda and Beaubien, and thereafter such proceedings were had by the said Governor and other constituted authorities of said New Mexico that on or about the 18th day of April, 1844, the said Armijo, as such Governor, made an alleged grant to the said petitioners which was confirmed by the departmental assembly of said New Mexico, at the place of Bircon del Rio Colorado. Translations of said petitions and proceedings from the Spanish language in which they were originally expressed are hereto annexed as a part of this bill and marked Exhibit No. 2.

IV.

Your orator further shows that within the said boundaries set forth in said petition of said Miranda and Beaubien and the alleged grant in pursuance thereof by the said Armijo are embraced lands

in the county of Las Animas, in the State of Colorado, de-
4 scribed as follows, to wit: Commencing on the southern boundary of the State of Colorado, in township 35 south, range 62 west of the 6th principal meridian, thence northeasterly through 35 and 34 south of ranges 62, 63, 64, 65, and 66 west, township 33 south of ranges 66, 67, and 68 west, township 32 south of ranges 68 and 69, to the northwest corner of the said alleged grant to Beaubien and Miranda; thence southerly through townships 32, 33, and 34 south of range 69 west, townships 34 and 35 south of range 70 west, to the southern boundary of Colorado; thence easterly with said boundary to the place of beginning, containing about 265,000 acres of the value of two million dollars.

V.

Your orator further shows to the court that on or about the 23rd day of January, 1857, proceedings were instituted before the then surveyor general, under the provisions of section 6 of an act of Congress entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, and to grant donations to actual settlers therein, and for other purposes," approved July 22nd, 1854, to enquire into the said alleged grant, and about the 17th day of September, 1857, the said surveyor general made report thereon as set forth in Exhibit No. 2, hereto annexed.

Your orator further shows to the court that the fourth section of the act of Congress approved June 1st, 1860, entitled "An act to confirm certain private land claims in the Territories," wherein the said claim of Beaubien and Miranda was considered, it was provided that the said "confirmation shall only be construed as a quitclaim or relinquishment on the part of the United States, and shall not affect the adverse rights of any person or persons whatsoever."

Your orator further shows that upon the 19th day of May, 1879, a patent to said lands was issued by the Government of the United States to said Beaubien and Miranda, their heirs and assigns, containing the following provisions, to wit: "But with the stip-
5 ulation that, in virtue of the provisions of the fourth section of the said act of June twenty-first, A. D. one thousand eight hundred and sixty, this patent shall only be construed as a quitclaim or relinquishment on the part of the United States, and shall not affect the adverse rights of any person or persons whomsoever."

Your orator shows that by virtue of the said act of Congress and the said patent your orator's claim and title to the said land was especially and especially to the lands hereinafter set forth and involved in this suit were in nowise affected and impaired; but, on the contrary thereof, your orator's claim and title thereto were specifically reserved and exempted from *from* the operation of the said act of Congress and the said patent to the said Beaubien and Miranda and their heirs and assigns.

VI.

Your orator further shows to the court that by sundry and divers mesne conveyances, to wit, a deed executed on the 7th of April, 1858,

by L. Pablo Miranda, agent for said Gaudalupe Miranda, to Lucien B. Maxwell; a deed executed on the 14th of September, 1858, by Charles Beaubien and wife to said Maxwell; a deed executed on the 19th of May, 1868, by Gaudalupe Miranda to said Maxwell; a deed executed on the 4th of April, 1864, by *by* Frederick Muller and wife to said Maxwell; a deed executed on the 4th of April, 1864, by Joseph Clouthier and wife to said Maxwell; a deed executed on the 20th of July, 1864, by Vital Trujillo and wife to said Maxwell; a deed executed on the 1st of February, 1867, by Jesus de Abreu to said Maxwell; a deed executed on the 1st of January, 1870, by Paul Beaubien to said Maxwell; a deed executed on the 3rd of May, 1866, by Aloy Schenrich and wife to said Maxwell; a deed executed on the 31st of May, 1866, by Alexander Hicklin and wife to said Maxwell, and by virtue of a decree in chancery in the district court for
6 the first judicial district of the Territory of New Mexico, in the county of Taos, made on the 29th of May, 1865, in partition in the cause of Alfred Dent *et al. vs.* Gaudalupe Miranda *et al.*, the said Lucien B. Maxwell became the owner of all the right, title, and interest in said lands theretofore claimed by the said Charles Beaubien and Gaudalupe Miranda as derived from the aforesaid alleged grant, saving and excepting such parcels as had theretofore been sold by the said Beaubien and Miranda.

VII.

Your orator further shows that by certain deeds executed by said Lucien B. Maxwell and wife to the Maxwell Land Grant and Railway Company, a corporation of New Mexico, dated respectively April 30th, 1879, and September 7th, 1879, the said Maxwell Land Grant and Railway Company acquired all the right and title in and to said land which the said Lucien B. Maxwell claimed to own and possess by virtue of the aforesaid conveyances and the decree specified in paragraph VI hereinbefore.

VIII.

Your orator further shows that afterwards by two certain mortgages or deeds of trust and certain proceedings and conveyances in virtue of the same or resting thereupon, 1, a mortgage deed made by the said Maxwell Land Grant and Railway Company to Thomas A. Scott and Samuel Felton, dated June 13th, 1870; 2, a mortgage deed made by the said Maxwell Land Grant and Railway Company to the Farmers' Loan and Trust Company, a corporation of New York, dated November 1st, 1872; 3, the decrees, orders, and judgments in chancery in the district court of Colfax county, in New Mexico, in the cause of Thomas A. Scott and Samuel Felton, trustees, *vs.* The Maxwell Land Grant and Railway Company and The Farmers' Loan and Trust Company, at the August and October term, 1879, in and about the foreclosure of the first above-described mortgage; 4, the decree and judgment in chancery in the district court of said Colfax county in the cause of The Farmers' Loan and Trust Company *vs.* The Maxwell Land Grant and Railway Company, Thomas

A. Scott, Samuel S. Felton, and William T. Thornton, receiver-, at the October term, 1879, in and about the foreclosure of the
7 second above-described mortgage; 5, two deeds bearing date March 27th, 1880, executed by F. W. Clancey, a master in chancery, by virtue of the said decrees and judgments purporting to convey the said lands to Frank R. Sherwin and Lucien Birdseye; 6, a deed made by said Sherwin and Birdseye and wife to the defendant, The Maxwell Land Grant Company, the said defendant became the owner and proprietor of all the right, title, and interest claimed by the said Beaubien and Miranda in and to the lands embraced in said alleged grant, including the lands involved in this suit, so far as the same was effective to invest said Beaubien and Miranda with any claim or color of title thereto, saving and excepting the interest in such lots, tracts, and parcels as had been previously conveyed away by said Maxwell, Beaubien, and Miranda or the said Maxwell Land Grant and Railway Company.

IX.

Your orator further shows to the court that on the 4th day of April, 1837, and at all the dates and times referred to in said alleged grant by Armijo to said Beaubien and Miranda, and during all the proceedings with reference to the same, the Republic of Mexico, as well as all its states, territories, provinces, and districts, including New Mexico and the ancient district of Santa Fé, was governed by the following supreme law, which was on said last-named date adopted and sanctioned by the General Congress, to wit:

"Law of the 4th of April, 1837, providing for the rendering effective the colonization of the lands which are or should be the property of the Republic.

"All directions heretofore issued in relation to colonization, so far as they are contrary to this law, are repealed.

"The government, with the consent of the council, will proceed to give effect to the colonization of the lands that are or should be the property of the Republic by means of sale, enfiteusis, or mortgage, applying the amount (which should not be less than ten
8 reals per acre) to the redemption of the national debt, contracted or to be contracted, reserving always a sufficient amount in order to fulfill the promises to the troops who aided in achieving the independence and for the rewards and grants decreed by Congress in favor of the native tribes or nations and of those aiding in the restoration of Texas, not being hindered by the laws heretofore passed in relation to colonization, the provisions of which, so far as they are contrary to this law, are repealed, the prohibition of the eleventh article of the law of the 6th of April, 1830, being renewed."

Your orator further shows that on the 12th day of April, 1837, in virtue of the authority conferred by the said law, the supreme government of the Republic of Mexico passed the following decree, to wit:

"Decree of April 12th, 1837. Decree of the supreme government in virtue of the authority conferred by the law of the fourth instant. Creation of a national consolidated stock, at an interest of five per cent. per annum, for the express purpose of converting the entire foreign debt and redeeming the same on the terms expressed.

"1. A consolidated national stock, with interest at five per cent. per annum, is hereby created for the sole and determinate object of converting the entire foreign debt, if the existing creditors consent, and for the redemption of the same in the manner expressed in the following articles. For this purpose Messrs. F. de Lizardy & Co. are appointed as agents for the Republic in said transaction, and are authorized, in the name of the Mexican nation, to issue accordingly the bonds of said consolidated national stock in pounds sterling, payable in London on the 1st of October, 1866, with coupons for interest in the margin, payable every six months and running to the aforesaid date. These bonds shall also be viséed by the minister plenipotentiary of the Republic at London or by the person acting in his stead.

"2. The holders of the bonds of the foreign debt in circulation (the proceeds of the two loans negotiated in London at five and six per cent. interest) may convert the same, together with the interest coupons overdue, into bonds of the new consolidated stock on the following conditions: 1. That the bonds of five per cent. interest shall be received in exchange cent per cent. 2. That those of six per cent. interest shall be at the rate of one hundred and twelve and a half per cent. for a hundred. 3. That the overdue coupons of interest of both loans shall be received cent per cent. 4. That they shall receive in payment of the sums which they desire to convert one-half of the amount in bonds of the consolidated stock at five per cent. interest and the other half in public land scrip in the departments of Texas, Chihuahua, New Mexico, Sonora, and the Californias at the rate of four acres per pound sterling, and this scrip shall also bear interest at five per cent. to the day on which
9 the owners are placed in possession of the land, increasing thereby proportionately the amount of property acquired, and security shall be given by those interested that they will be present to take possession within the period designated in article 5.

"3. The interest on the bonds of the national consolidated *consolidated* stock shall be payable in London, at intervals of six months, on the first days of April and October of the present year, 1837. In the meantime, and until arrangements for remitting periodically the funds destined to this object, the holders of the interest coupons which become due shall have the right to present them to the agent of the Republic in London on the day of their maturity, and to require of them in exchange for such coupons a certificate of their value, viséed in like manner by the minister of the Republic at said court, and these shall be received on presentation as ready money in payment of a sixth part of the duties collected at the maratime custom-houses of Vera Cruz and Santa Anna de Tamaulipas. The

agents of the Republic in London shall not consequently be at liberty to refuse to give such certificates when thereto requested by the holders of the unpaid coupons. In such case the value of each pound sterling shall be computed at the rate of five dollars, and the amount of each certificate shall be increased six per cent. in full compensation for difference of exchange and all expenses, including in the six per cent. one per cent. which the persons interested shall pay on receiving the certificates to the agents, one-fourth part of which they shall relinquish in favor of the minister plenipotentiary of the Republic.

"4. The public land scrip shall, in like manner, be issued in the name of the Mexican nation by the agents aforesaid, and shall be viséed by the diplomatic agent accredited at London, the tenor of which shall be as follows: 'To all to whom these presents may come: Know ye that the Mexican Republic acknowledges that (the name) or his representative is the proprietor of (the number) acres of land in the department (the place), of which he shall be placed in immediate and full possession by competent authority, with the aid of the public surveyor, and on the delivery of this scrip, at the rate of twelve reals for every hundred acres, and of these three reals shall belong to the minister that visées them.'

"5. The property of the land scrip may pass from person to person by indorsement; but after taking possession, of which the scrip gives the right, and receiving a new title the same cannot be transferred to another person except in virtue of a public instrument of sale.

"6. It is necessary that the scrip should be presented when the same is to be redeemed by the delivery of the land at the office of the secretary of the several departmental governments in order that he may make a list of them as presented (obtaining a book for that purpose) with the view of giving those interested a preference in the selection of the land according to the order of presentation. For the same purpose shall be delivered to them a certificate, in which shall appear the number and place named in the scrip, in order that it may be presented to the local authorities, and thus, with the aid of the surveyor of the department, will give to them the possession of the land which they select, taking care, without fail, to observe the eleventh article of the law of the sixth of April, 1830, which declares, 'In the exercise of the authority reserved to the General Congress in the seventh article of the law of the eighteenth of August, 1824, the colonization of foreigners of adjacent countries is prohibited in those states and territories which adjoin such foreign nations; consequently contracts which are opposed to this law shall be suspended.'

"7. For the greater security of the payment of the principal and interest of this consolidated stock the Mexican Government, in the name of the nation, specially pledges one hundred millions of acres of public land in the departments of the Californias, Chihuahua, New Mexico, Sonora, and Texas as a special guarantee of said stock until the total extinction of such debts; but if any sale shall be made of lands so pledged it shall be at least at the rate of

four acres to the pound, and the proceeds shall be paid by the purchaser to the government agent in London, from whom alone he can receive the corresponding scrip, and they shall use the product of the sale in the redemption of the bonds of the new consolidated stock, which also may be received in payment for said lands at the price said bonds bear in the market.

"8. The proper period for making the application for a change of securities treated of in article 2 of this decree will be from the day on which the appropriate notice is published in London by the agents of the Republic till the corresponding day of the following year; when this period shall have passed no further opportunity shall be afforded for such change.

"9. During said period and until the thirty-first day of December, 1839, the holders of the bonds of the consolidated stock shall have the right either on receiving them from the agents or at any other time for the purpose of extinguishing the same at the rate aforesaid of four acres to the pound sterling; but if this be not done before the first of January, 1840, although the right will be at all times recognized of extinguishing these bonds by receiving the scrip in like manner with ten per cent. premium, there shall not be granted to them more than three acres of land to the pound sterling.

"10. Finally, those foreigners who in virtue of the scrip which they hold come to the Republic and establish themselves in their new estates shall acquire from that moment the title of colonists, and they and their families shall enjoy all the rights and advantages which are or may be granted by law to naturalized foreigners, and on the same conditions, but it shall not be allowed that there be held by a single person or the owner more than a league square of five thousand varas of regadio, four of superficie temporal, and six leagues of superficie de abrevadero; and the usufruct of the mines which are found in said lands shall be subject to the provisions of the general mining ordinances." (Circulated on the same day by the department of the treasury and published on edict on the seventeenth of May following.)

Your orator further shows that by virtue of said law, which remained in full force and effect at the date of the alleged grant by the said Armijo to said Beaubien and Miranda and during all the proceedings connected therewith, the colonization and empresario laws of Mexico theretofore in force were wholly abrogated and annulled, and that by reason thereof the said Governor Armijo had no power or authority to make any grant or concession to colonizers or empresarios in the departments of Texas, Chihuahua, New Mexico, Sonora, the Californias, or the ancient district of Santa Fé.

11 Your orator further shows to the court that by virtue of the said law of the 4th of April, 1837, and the said decree of the supreme government of Mexico passed in pursuance thereof on the 12th day of April, 1837, the said Governor Armijo was pro-

hibited from making the aforesaid grant to the said Beaubien and Miranda.

X.

Your orator further shows to the court that upon the 13th day of March, 1833, at Saltillo, the political capital of Coahuila-Texas, constituting a State in the Republic of Mexico, Jose Manuel Royuela and John Charles Beales presented their petition, in due form of law, to Jose Maria de Letona, the Governor of Coahuila-Texas, in the Spanish language (of which a correctly translated copy is herewith annexed in Exhibit No. 3 and made part hereof), whereby the said petitioners, Royuela and Beales, requested the said Jose Maria de Letona to accept them as empresarios and to grant to them as such empresarios the tract of land included within the following limits, viz: Beginning at a landmark set up on the spot whereat the thirty-second degree of north latitude is crossed by the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant petitioned for by Col. Reuben Ross, from thence proceeding west along the parallel of the thirty-second degree of latitude as far as the eastern boundary of New Mexico; from thence running north on the boundary line between the Provinces of Coahuila & Texas and New Mexico as far as twenty leagues south of the River Arkansas; from thence east to the meridian of the hundred and second degree of longitude, and from thence proceeding south as far as the place of beginning.

Your orator further shows to the court that on the 14th day of March, 1832, the supreme government of Coahuila-Texas granted the said petition of said Royuela and Beales, and that by
12 and through its Governor, Jose Maria de Letona, having full jurisdiction in the premises, at the city of Leona Vicario (which is and was identical with the city of Saltillo), duly executed and delivered to the said Royuela and Beales as empresarios a grant of lands within the limits prescribed in their said petition, which limits are hereinbefore set forth in detail.

Your orator further shows to the court that the said empresario grant so executed and delivered to the said Royuela and Beales was in the Spanish language and in strict conformity with the Mexican law, and was officially attested by Santiago del Valle, secretary of Coahuila-Texas, and duly archived on said last-named date in the said secretary's office (a correctly translated copy whereof is hereto annexed in Exhibit No. 3 and made part hereof).

Your orator further shows to the court that the said petition of Royuela and Beales so presented to the said Governor of Coahuila-Texas and the grant of lands so made to them by the said Governor of Coahuila-Texas, duly archived on the 14th of March, 1832, were in exact conformity to and authorized by the national colonization and empresario laws of the Mexican Republic and Coahuila-Texas.

Your orator further shows that by virtue of the said grant the title in fee to the lands embraced within the limits prescribed in said petition and grant made in pursuance thereof by the said Gov-

ernor of Coahuila-Texas, including the lands involved in this suit, hereinafter more specifically described, vested in the said Royuela and Beales, their heirs and assigns, subject to the defeasance contained in the conditions subsequent set forth in said grant.

Your orator further shows that the lands embraced in the alleged grant by Armijo to the said Beaubien and Miranda in this bill hereinbefore described, including the said lands in Las Animas
13 county, and especially the lands involved in this suit hereinafter specifically described, are embraced in and comprise a part of the lands the title to which vested in said Royuela and Beales by virtue of the grant thereof made to them by the Governor of Coahuila-Texas, as hereinbefore set forth.

XI.

Your orator further shows to the court that upon the 11th day of October, 1832, the said Royuela did, by his deed of conveyance duly executed on that day, convey to the said Beales his entire right, title, and interest in all of said lands (including the lands involved in this suit and hereinafter more specifically set forth), whereby the said Beales became the sole and exclusive owner thereof, as the same will more fully appear by a copy of said deed contained in Exhibit No. 4, hereto annexed and made part of this bill.

XII.

Your orator further shows to the court that afterwards the said Beales removed to the city of New York, in the State of New York, and there, upon the 2nd day of July, 1873, he made, published, and declared his last will and testament (a true copy of which is hereto annexed, marked Exhibit No. 5 and made part hereof), whereby the said Beales devised all of his property, including all the property hereinbefore described and involved in this suit, to James Alfred Greaves Beales and Adelaide Kerrison Jaffray, formerly Beales (his only children), and Anita Exter, the sister of the half blood of the said Alfred James Greaves Beales and Adelaide Kerrison Jaffray, to be equally divided between them, share and share alike, and in case of the death of one or more of the said three devisees before the decease of the said John Charles Beales without issue the said real estate to go to the survivor or survivors.

14 Your orator further shows that on or about the 29th day of September, 1879, said John Charles Beales departed this life in the said city and State of New York; whereupon his said last will was duly admitted to probate on said last-named day in the court of the surrogate of the said city of New York; and the executors named in said will having made renunciation of their rights as such executors, the said James A. G. Beales was duly appointed administrator, with the will annexed; whereupon letters testamentary were issued to him. A copy of said will and letters testamentary are hereto annexed and made part hereof, marked Exhibit No. 5.

XIII.

Your orator further shows to the court that on the 17th day of November, A. D. 1886, the said James A. G. Beales, as such administrator, with the will annexed, and for himself, as one of the devisees therein named, together with the said Adelaide K. Jaffray and her husband, J. Hamilton Jaffray; Anita Exter, and Eugenia K. Beales, the wife of said James A. G. Beales, by their deed of that date, duly executed and acknowledged, conveyed to Newton B. Childs, of Kansas City, Missouri, all the real estate embraced in and described in said grant made by the said Governor of Coahuila-Texas to said Royuela and Beales, including the real estate hereinbefore set forth in this bill as being within the boundaries named and prescribed in the said alleged grant to Beaubien and Miranda, and embracing more particularly the said lands located in Las Animas county involved in this suit and hereinafter more specifically set forth.

A copy of said deed is hereto annexed and made part hereof, marked Exhibit No. 6.

Your orator further shows that on the 23rd day of November, 1886, said Newton B. Childs and wife, Nellie B. Childs, by their deed of that date, duly executed and acknowledged, sold and conveyed to the complainant, The Inter-State Land Company, all of his right, title, and interest to all of the lands embraced in said grant to said Royuela and Beales, including the lands embraced in the alleged grant to Beaubien and Miranda, and especially the lands hereinbefore described as being in the said Las Animas county and the lands involved in this suit, hereinafter more specifically described.

A copy of said deed is hereto annexed and made part hereof and marked Exhibit No. 7.

XIV.

Your orator further shows to the court that by reason of the said grant to Royuela and Beales, said will and letters testamentary, and said mesne conveyances the title to all the said lands described in this bill of complaint, including the lands involved in this suit and hereinafter specifically described, became and is absolutely vested in the said complainant, The Inter-State Land Company, which is the sole and exclusive owner thereof.

Your orator further shows to the court that your orator, the said Inter-State Land Company, is in the actual and exclusive possession by its tenants of the following parts and parcels of the said land hereinbefore described in this bill of complaint and situated in the county of Las Animas, State of Colorado, to wit: The southeast quarter of the northeast quarter and the east half of the southeast quarter and the southwest quarter of the southeast quarter and the east half of the northeast quarter and the east half of the southeast quarter of section 30, in township 33 and range 68, in the Stonewall Valley, of great value, to wit, of the value of five thousand dollars.

Also a certain tract of land about one-half mile wide and two miles long at the junction of Loranz cañon with Alamosa cañon,

cañons on the south side of the Purgatorie or Rio Las Animas, in said county, and being the place now occupied by John B. Lay, as
16 tenant of this complainant, as a farm and stock ranch.

Also that portion of what is known as the south valley of the Stonewall country in said county, described as follows: Commencing at a point on the north bluff of the south branch where said bluff is intersected by the Ute Mountains, thence following the base of said mountains in a northerly direction one mile to a point; thence westerly across said Stonewall Valley to a point at the base of opposite mountains at a pile of rocks; thence along the base of said mountains in a southerly direction to the point of the north bluff of said south branch; thence eastwardly and along the top of said north bluff of said south branch to the place of beginning, of great value, to wit, of the value of ten thousand dollars.

All that real estate situate, lying, and being in what is known as the Stonewall country, in the said county of Las Animas, more particularly described as follows, to wit: Commencing at the northeast corner of the northwest quarter of section 30, township 33, range 68, thence due west one-half mile to a point; thence due south one-half mile to a point; thence due east one-half mile to a point; thence due north one-half mile to the place of beginning, the same being now occupied and in the possession of Anderson Duling as tenant of the said Inter-State Land Company, by virtue of lease thereof, in pursuance of law.

Also the south half of the southwest quarter and the south half of the southeast quarter of section 28 and all of section 33, in township 33 and range 67 west, in the said county of Las Animas.

Also section 34, in township 33 south, of range 67 west, of sixth principal meridian, and section 3, in township 34 south, of range 67 west, of the sixth principal meridian.

17 Also all the tracts and parcels of land in said county of Las Animas situate and being in what is known as the Stonewall country, to wit: South half of the southeast quarter of section 19 and the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 30, in township 33 of south range 68, being the lands known as the Chaplin ranch, at Stonewall, in said county.

Also the east half of the northeast quarter and the west half of the northeast quarter of section 31, township 33 south, range 68 west.

Also the following-described tracts and parcels of land lying and being in what is known as the valley of the Middle Fork of the Purgatorie river and about one-half mile east of the Stonewall post office, in the said county of Las Animas, as follows, to wit, lying and being and adjoining that certain tract of land leased by the Inter-State Land Company to Leandro Chavez by lease of date November 28th, 1888, on the north side thereof.

Also that portion and tract of land occupied by George Lounsberry, more particularly described as follows, to wit, the said George Lounsberry being a tenant of the said Inter-State Land Company as to the lands in said county of Las Animas and being

occupied by the said George Lounsberry as a stock ranch at Stonewall, and the other part and parcels of said lands, commencing twenty-three feet and one hundred and two and a half north of the southwest corner of the northeast quarter of section 20, township 33 south, range 68 west, and running in a northerly direction 78 feet to a point; thence northerly 60 feet to a point; thence southerly to intersection of west half of middle ditch; thence following easterly bank of said ditch 40 feet; thence easterly to place of beginning.

Also all that portion of the southwest quarter of the northeast quarter of section 20, township 33 south, range 68, commencing at
4 chains east of the one-half-mile corner and 20 feet north of
18 the section line; thence 78 yards east to a point; thence southerly 78 yards to a point; thence 78 yards to a point.

Also all that certain tract situate in the valley of the Middle Fork of the Purgatorie river, in said county of Las Animas, about one and one-fourth mile east of the Stonewall post office, in said county, said tract of land being bounded on the northerly side by the summit of a ridge on the north side of said valley, and on the south side by the base of the mountain on the opposite side of the river, and bounded on the east and west by a straight line drawn across the valley to the end of the north and south boundary lines.

Also all of the following-described real estate, to wit: All the following tracts and parcels of land situated in said county of Las Animas, on the middle portion of the Purgatorie river, about two miles east of the Stonewall post office, in the county of Las Animas, State of Colorado, bounded as follows: Commencing at a point which is the center of that certain round mound peak of ridge northeast of northeast of house of David Trujillo, thence northwardly and along the summit of said ridge on north side of said farm or stream a distance of two hundred yards to a point on summit of said ridge, thence in a southerly direction and across the valley to a point at the base of the mountain ridge on southerly side of valley marked by a stake near a pine tree, thence eastwardly and along the base of said mountain to the corner of the fence enclosing said lands, thence northwardly across said valley and along a line of fence and extended on to the place of beginning, said land being occupied by said David Trujillo.

Also that certain portion of the valley or park lying immediately back of that certain natural object called the Stonewall, as is embraced within the following limits: Bounded on the south by a fence
that is the boundary line between the lands now claimed by
19 Julius E. Clark and the lands occupied by Joseph Hagen, the easterly line being the summit od said stone wall, a distance of one mile from the point where said fence, if extended, would intersect the summit of said stone wall, the westerly line being the base of the mountain ridge running parallel and west of said wall, and the northerly boundary being a line across said valley one mile north of said southern line and parallel with and extending from the summit of said mountain to the base of said mountain.

Your orator further shows to the court that the aggregate value of

the said lands involved in this suit and hereinbefore specifically described, of which your orator has possession as aforesaid by its said tenants, is of great value and of the value of two hundred thousand dollars.

XV.

Your orator further shows to the court that said defendant, said Maxwell Land Grant Company, by virtue of the said alleged grant to said Beaubien and Miranda, said act of Congress and patent in conformity thereto, and the various mesne conveyances to defendant, as hereinbefore set forth, is claiming to be the sole and exclusive owner of the property described in this bill, situate in said Las Animas county, and particularly the property hereinbefore specifically described as being in the possession of your orator by its tenants, as aforesaid.

Your orator further shows to the court that, in maintenance of such assertion of title on the part of the said Maxwell Land Grant Company, the said defendant, The Maxwell Land Grant Company, is now prosecuting a suit in equity, pending in this honorable court, against the tenants of your orator, the Inter-State Land Company, as to the lands hereinbefore specifically described, of which your orator has the legal and exclusive possession, in which suit in equity
20 the said defendant, The Maxwell Land Grant Company, — is the complainant therein, charges that the said tenants of your orator, together with other persons, have located on portions of said lands embraced in the limits prescribed in said alleged grant to Beaubien and Miranda, embracing the lands hereinbefore specifically described, which are in the possession of your orator as aforesaid; and, further, in said suit in equity the said Maxwell Land Grant Company is claiming to be the sole and exclusive owner of your orator's said lands hereinbefore specifically described and occupied by your orator's tenants as aforesaid, and in said suit said Maxwell Land Grant Company alleges that the title and claim of title of your orator's tenants is subordinate and inferior to the title claimed by the said Maxwell Land Grant Company thereto and casts a cloud on the alleged title of the said Maxwell Land Grant Company thereto, and in said suit the said Maxwell Land Grant Company further charges that the use and occupancy of the said lands by your orator's tenants is illegal and wrongful, and that their acts of depasturing the grass growing thereupon by herds of cattle, sheep, and goats are wrongful and constitute trespasses upon said premises, and in said suit the said Maxwell Land Grant Company asks for the writ of injunction against your orator's tenants to restrain their said use and enjoyment of the possession of said premises, and that they be removed by the order of the court from the occupation thereof, and that their right, title, and claim of title be, by the decree of this court, *be* declared inferior and subordinate to the alleged claim of the said Maxwell Land Grant Company.

Your orator further shows to the court that the said defendant The Maxwell Land Grant Company, is also prosecuting actions of ejectment against your orator's tenants to oust them from the pos-

session and use and enjoyment of the said premises, and that
21 the said actions of ejectment and suit in equity are all pending in this honorable court, and are based upon the said alleged grant to Beaunien and Miranda, said act of Congress and patent in conformity thereto, and said mesne conveyances, whereby the said Maxwell Land Grant Company is claiming to be the sole and exclusive owner of all the right and title to the said premises involved in this suit and the right to the possession and enjoyment thereof, to the utter exclusion and to the great injury and damage to your orator and its said tenants.

Your orator further shows to the court that the said acts and doings of the said Maxwell Land Grant Company, and its said claim and assertion of title to the premises involved in this suit, and its attempts to enforce the same by means of said actions of ejectment and suit in equity against your orator's tenants casts a cloud upon the title of your orator to the said lands involved in this suit.

Your orator further shows to the court that the said defendant, The Maxwell Land Grant Company, is threatening to institute *either* actions of ejectment against others of your orator's tenants, and is also and about to enter upon and take actual possession of other vacant tracts of land belonging to your orator, and being portions of the lands hereinbefore specifically described as being situate in the county of Las Animas, thereby rendering necessary a multitude of actions at law by your orator for the recovery of the possession thereof.

And forasmuch as your orator is remediless in the premises by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable; and forasmuch as by this means only can a multiplicity of actions at law be prevented, all depending upon the same right and involving the same question; and forasmuch as the said actions and doings of the defendant work great and irremediable
22 damage and injury to your orator: Therefore your orator prays that as to it, the Inter-State Land Company, the said alleged title and claim of title of the Maxwell Land Grant Company may by the proper order and decree of this honorable court be for naught held and esteemed, and that so far as the same affects the lands involved in this suit that the said alleged grant to Beaubien and Miranda, said act of confirmation and patent, and all the mesne conveyances aforesaid from which the said defendant, The Maxwell Land Grant Company, deduces and asserts its claim to the lands involved in this suit may, as to your orator, be declared void for any and all purposes whatsoever; and that the said defendant, The Maxwell Land Grant Company, and each and every person claiming by, through, or under it may be forever enjoined from asserting any title to or any interest in any of the lands; and that the Maxwell Land Grant Company may be perpetually enjoined from the further prosecution of the said suit in equity and actions of ejectment against your orator's said tenants and from attempting to lease, convey, — occupy any of the said lands or any part thereof, and that your orator may be decreed to have the legal title to the prem-

ises hereinbefore described, and for such other and further relief as the nature of this case may require and to this honorable court may seem meet.

May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the defendant, The Maxwell Land Grant Company, commanding it on a day certain therein to be named to appear in this honorable court and then and there a true, full, direct, and perfect answer to make to all and singular the premises (but not under oath, the requirement of which is hereby expressly waived,) and further to perform and abide such further order, direction, and decree herein as may be made against the said defendant and as to
23 this honorable court may seem meet and according to equity and good conscience; and your orator, as in duty bound, will ever pray.

J. E. MARTIN,
JOHN L. JEROME,
AARON S. EVEREST,
ALEX. GRAVES,
Att'ys for Complainant.

EXHIBIT No. 1.

Articles of Incorporation of the Inter-State Land Company of Colorado.

Be it known that we, the undersigned, Newton B. Childs, James F. Hadley, Thomas Carney, Charles Goodnight, Orville H. Nelson, W. H. Lord, and William V. Childs, hereby associate ourselves together for the purpose of forming a private corporation under the laws of the State of Colorado, and do hereby certify under our hands and seals:

Article 1. That the name of the corporation shall be "the Inter-State Land Company."

Article 2. That the objects for which this corporation is formed and organized are to engage in the business of buying, leasing, owning, and selling real estate in Colorado and other States and Territories in the United States and doing everything that belongs or pertains to such business.

Article III. That the amount of the capital stock of this corporation shall be ten million dollars, and shall be divided into one hundred thousand shares of one hundred dollars each.

Article IV. That the term of existence for which this corporation is organized shall be twenty years.

Article V. That the number of directors or trustees of this corporation shall be seven, and the names and residences of those who are chosen for the first year are—

Newton B. Childs, Kansas City, Mo.
James F. Hadley, Kansas City, Mo.
Thomas Carney, Leavenworth, Kansas.
Charles Goodnight, Paloduro, Texas.
Orville H. Nelson, Burlingame, Kansas.

W. H. Lord, Burlingame, Kansas.
Wm. V. Childs, Kansas City, Mo.

Article VI. That the principal office of this company and where its business shall be carried on shall be at Denver, Arapahoe county, Colorado, with branch office at Kansas City, Missouri, where meetings of its directors and stockholders may be held, and at such other places as the business of the company may require.

In testimony whereof we have hereunto subscribed our names and affixed our seals this 12th day of November, A. D. 1886.

NEWTON B. CHILDS.	[SEAL.]
JAMES F. HADLEY.	[SEAL.]
THOMAS CARNEY.	[SEAL.]
CHARLES GOODNIGHT.	[SEAL.]
ORVILLE H. NELSON.	[SEAL.]
W. H. LORD.	[SEAL.]
WM. V. CHILDS.	[SEAL.]

24 STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that Newton B. Childs, James F. Hadley, Charles Goodnight, Orville H. Nelson, W. H. Lord, and Wm. V. Childs, who are personally known to the undersigned, a commissioner of deeds for the State of Colorado, to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, this day appeared before me and acknowledged that they executed the same as their free act and deed for the purpose therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal this 12th day of November, A. D. 1886.

FRED. W. PERKINS,
Commissioner of Deeds for Colorado at Kansas City.

(Endorsed:) Articles of incorporation of the Inter-State Land Company of Colorado, with protest. Filed in the office of secretary of state of Colorado on the 22nd day of November, A. D. 1886, at 5 o'clock p. m. Recorded in Book 15, page 30. Melvin Edwards, secretary of state.

EXHIBIT No. 2.

For the year- one thousand eight hundred and forty and one thousand eight hundred and forty-one.

MOST EXCELLENT SIR: The undersigned, Mexican citizens and residents of this place, in the most approved manner required by law state—

That of all the departments in the Republic, with the exception of the Californias, New Mexico is one of the most backward in intelligence, industry, manufacture, &c., and surely few others present the natural advantages to be found therein, not only on account of its abundance of weter, forests, woods, and useful timber, but also on

account of the fertility of the soil, containing within its bosom rich and precious metals, which up to this time are useless for the want of enterprising men who will convert them to the advantage of other men, all of which productions of nature are susceptible of being used for the benefit of society in the department, as well as of the entire government, if they were in the hands of individuals who would work and improve them. An old and true adage says, "What is the business of all is the business of none." Therefore while the fertile lands in New Mexico, where without contradiction nature has proven herself more generous, are not reduced to private property, where it will be improved, it will be of no benefit to the department, which abounds in idle people, who for the want of occupation are a burden to the industrious portion of society, while with their labor they could contribute to its welfare and honestly comply with their obligations. Idleness, the mother of vice, is the cause of the increase of crimes which are daily being committed, notwithstanding the severity of the laws and their rigid execution. The towns are overrun with thieves and murderers, who by this means alone desire to procure their subsistence. We think it a difficult task to reform the present generation, accustomed to idleness and hardened to vice; but the rising one, receiving new impressions, will easily be guided by principles of pure morality. The welfare of a nation consists in the possession of lands which produce all the necessaries of life without requiring those of other nations, and it cannot be denied that New Mexico possesses this great advantage and *and* only requires industrious hands to make it a happy residence. This is the age of progress and the march of
25 intellect, and they are so rapid that we may expect, at a day not far distant, that they will reach even us. Under the above conviction we both request your excellency to be pleased to grant us a tract of land for the purpose of improving it without injury to any third party, and raising sugar beets, which we believe will grow well and produce an abundant crop, and, in time, to establish manufactories of cotton & wool, & raising stock of every description. The tract of land we petition for, to be divided equally between us, commences below the junction of the Rayado river with the Colorado and in a direct line towards the east to the first hills, and from there running parallel with the said River Colorado in a northerly direction to opposite the point of the Una de Gato, following the same river along the same hills, to continue to the east of said Una de Gato river, to the summit of the table land (mesa), from which turning northwest to follow along said summit until it reaches the top of the mountain which divides the waters of the rivers running towards the east from those running towards the west, & from thence following the line of said mountain in a southwardly direction until it intersects the first hills south of the Rayado river, and following the summit of said hills towards the east to the place of beginning. For the reasons above expressed and being the heads of large families we humbly pray your excellency to take our joint petition under consideration and be pleased to grant us the land we petition for, by doing which we will receive grace & justice. We

swear it is not done in malice. We protest good faith and whatever may be necessary, etc.

GAUDALUPE MIRANDA.
CARLOS BEAUBIEN.

Santa Fé, January 8, 1841.

SANTA FÉ, *January 11th*, 1841.

In view of the request of the petitioners and what they state therein being apparent, this government, in conformity with law, has seen proper to grant and donate to the individuals subscribed the land therein expressed in order that they may make the proper use of it which the law allows.

ARMIJO.

Taos, February 12, 1843.

TAOS, *February 12th*, 1843.

Don Cornecio Vigil, justice of the peace:

The undersigned, Mexican citizens & residents of this department, appear before you in the most proper manner provided by law and state that, having received from the government of the department a grant to the public land set forth in the accompanying plat, as will be seen by the superior decree attached to the margin, and having no title of possession which will secure our legal property and prevent any one disturbing us in it, we request you to consider us as having presented ourselves and without delay execute the same to be used according to our rights.

We therefore request you to comply with our request, justice being what we impetrate. We swear not to act with malice, & in whatever may be necessary, &c.

GAUDALUPE MIRANDA.
CARLOS BEAUBIEN.

TAOS, *February 13th*, 1843.

Considered as presented and received as far as the law allows. I, the present justice, with those in my attendance and instrumental, will proceed to the place mentioned in the accompanying
26 documents & let the possession solicited be given to the petitioners in order that it may be held by them, their heirs and successors, according to law. Citizen Cornelio Vigil, justice of the peace of the first demarkation of Taos, so provided, ordered, and signed, with those in attendance. I certify.

CORNELIO VIGIL.

Attending:
BUENAVA VALDEZ.
Attending:
JUAN MANUEL LUCERO.

In the town of Taos, on the twenty-second of February, one thousand eight hundred and forty-three, I, citizen Cornecio Vigil, justice of the peace of this precinct, by virtue of what has been ordered in the foregoing decree, proceeded to the land referred to by Don Gaud-

alupe Miranda and Don Carlos Beaubien in the foregoing petition, & being there with those in my attendance and instrumental witnesses, which for that purpose were appointed, we proceeded to erect the mounds according as the land is described in the accompanying petition and which corresponds with the plat to which I attach my rubric, and, commencing on the east of Red River, a mound was erected, from whence, following in a direct line in an easterly direction, to the first hills, another mound was erected at the point thereof, &, continuing from south to north on a line nearly parallel with Red River, a third mound was erected on the north side of the Chicorica or Chacuaco mesa (table land); thence, turning towards the west and following alongside the said table land of the Chacuaco, to the summit of the mountain, where the fourth mound was erected; from thence, following along the summit of said main ridge from north to south, to the Cuesta del Osha, one hundred varas north of the road from Fernandez to the Lugana Negra, where the fifth mound was erected; from thence, turning again to the east towards Red River & following along the southern side of the table lands of the Rayado & those of the Gonzalitos, on the eastern point of which the sixth mound was erected; from thence, following in a northerly direction; I again reached Red River on its western side, where the seventh and last mound was erected opposite to the first, which was erected on the eastern side, and, being registered, I took them by the hand, walked with them, caused them to throw earth, pull up weeds, and show other evidence of possession, when the act was concluded, the boundaries being determined without any claim whatsoever to the injury of any third party, as I, the aforesaid justice, in the name of the sovereignty of the nation (which may God preserve), I gave to the aforesaid Don C. Miranda and Don. C. Beaubien the perfect and personal possession asked for by them, in order that it may answer as a sufficient title for them, their children and successors, in which I will protect and defend them, & I direct that they be not deprived of said land without having been first heard & judgment rendered according to law.

In testimony whereof I signed, with those in my attendance and instrumental witnesses, who were citizens Jose Maria Valdez, Pablo Java Millo, and Pedro Valdez, who were present and residents of this precinct. To which I certify.

CORNELIO VIGIL.

Instrumentals:

JOSE MARIA VALDEZ.
PABLO JAVAMILLO. (Seal fourth, two reals.)
PEDRO ANTONITO VALDEZ.
JUAN MANUEL LUCERO.

27 Years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MOST EXCELLENT SIR: Citizen Carlos Beaubien, native of Canada, but naturalized & resident of this department, in the jurisdiction of San Fernandez de Taos, for himself and in the name of his associate,.

D. Gaudalupe Miranda, native of the Mexican Republic, appears before you with due respect & in the most approved manner provided by law & convenient to him, and states that, being about to undertake the cultivation of the lands which by virtue of a petition which we presented to the local governor on the 8th day of January, 1841, asking that the public lands at the place of "El Rincon del Rio Colorado" be granted to us, including the Rargado & Ponil rivers, &c., and as there was no injury done to any third party our petition was acceded to, as may be seen by the decree issued on the 11th day of January in the same year by the most excellent governor & commander general, Don Manuel Armijo, which is contained on the margin of our deeds, I have been prevented from carrying those projects into effect on account of the decree of the 27th of February last, issued by your excellency, & which, through your secretary, was communicated to the prefecture of the first district. In order that, paying attention to the petition addressed to your excellency by the curate Martinez & others in reference to a grant of lands made to the citizen of the United States, Mr. Carlos Bent, and that all use made of them be suspended, I have to state to your excellency, in defence of those lands, which are in our possession, according to the title thereto, which *are* in our possession, that the petition addressed to your excellency by the curate Martinez & others is founded upon an erroneous principle, as the aforesaid Mr. Bent has not acquired any right to the said lands. It is therefore very strange that the curate Martinez & others pretend to involve our property, as it has no connection with that of that individual; therefore it is to be presumed the necessary consequence must be that the curate Martinez and his associates do not know to whom those lands belong nor their extent, as he states that a large number of leagues were granted, when the grant does not exceed fifteen or eighteen, which will be seen by the accompanying judicial certificate. They also state in the petition referred to, as I am informed, that those lands are recognized as commons, where the stock of those towns is pastured. Here is another error, when the same curate states that is the place where buffaloes are hunted, very evidently making a palpable contradiction. He also states in his celebrated petition to the supreme government, praying that the natives be not allowed to hunt that most abundant game for fear that the race would be extinguished on account of their unnecessary butchery at improper seasons, & it has removed so far that it takes several months to reach it, & being at so great distance, can it be supposed that travelling at a moderate gait it can be reached in one or two days? Therefore I believe that their claims to the lands granted *are* assigned to Mr. Charles Bent is a fraudulent one, & as the claim is made against that individual I do not see that we should be deprived of its productions, our object being to put it under cultivation, & not only does the suspension of labor on those lands injure us, for the reason of having incurred heavy expenses, but also a considerable number of families and industrious men, who are willing and ready to settle upon these lands, and to whom we have given lands, a list of which individuals I accompany in order that your excellency, see-

ing their number, may determine what may be proper, and even if it were beneficial to the entire department that—(torn). In 28 order that your excellency may determine whether it is just or not I accompany the documents that attest our title, requesting that they be returned. Therefore I pray your excellency that we be allowed to remain in the free use of our property, by which I will receive grace and justice, which I impetrate. I swear it is not done in malice, &c.

Santa Fé, April 13th, 1844.

CHARLES BEAUBIEN.

SANTA FÉ, *April 14th*, 1844.

This office, collecting all the precedents in reference to the matter, will refer these proceedings to the most excellent departmental assembly in order that it may give its opinion.

LENA.
JOSE J. ZUBIA.

MOST EXCELLENT SIR: In session to-day this most excellent assembly, in consideration of your excellency's decree, has resolved upon the following opinion:

This most excellent assembly, being informed of the petition of Mr. Charles Beaubien, in which he states for himself and in the name of his associate, Miranda, that in consequence of an order issued by the most excellent Governor Don Mariam Chavez the free use and benefit of their possession was forbidden them, and that this was done on account of a petition made by the priest, Martinez, and the chiefs of the Pueblo of Taos falsely stating that this land was granted to Mr. Charles Bent and other foreigners, the said statement of the priest, Martinez, and associates being untrue, this assembly believing that the order of suspension having been based upon a false statement, and in view of the documents which accredit the legitimate possession of Miranda and Beaubien and their desires that their colonies shall increase in prosperity and industry, for which purpose he has presented a long list of persons to whom they have offered lands for cultivation and who shall enjoy the same rights as the owners of the land; that the government having dictated the steps for the sole object of ascertaining the truth, and the truth having been ascertained and the right of the party established, is of the opinion that the aforesaid superior decree be declared null and void, and that Miranda and Beaubien be protected in their property as having been asked for and obtained according to law. This is our opinion, but your excellency may determine what you deem proper.

FELIPE LENA.
AUGUSTIN DURAN.
ANTONIO LENA.

DONACIONO VIGIL,
Acting Secretary.

SANTA FÉ, *April 18th*, 1844.

In view of the foregoing opinion of the most excellent assembly of the justice of the cause of the petitioner for himself and for his associate, Miranda, concerning the grant made to them by Governor General Manuel Armijo, and the illegal petition of the curate, Antonio Jose Martinez, and associates, in which they state the lands of the Rincon del Rio Colorado was granted to foreigners, the order of the 27th of February, issued by this government, forbidding the free use of the land in question is repealed, and Messrs. Beaubien and Miranda are fully authorized to establish their colonies according to the offers made by them when they petitioned for the land which has been granted to them. Let this be transmitted to the prefect in order that he may issue his orders in accordance with this decree.

29 In the absence of the secretary and by the direction of his excellency the governor.

LENA.

DONACIONO VIGIL,
Acting Secretary.

RIO ARRIBA, *April 18th*, 1844.

Let the foregoing proceedings, in which is to be found the superior decree of his excellency the Governor of this department, dated the 18th inst., be transmitted to the party or parties interested in the lands referred to, showing the *the* documents to the justice nearest to the land, who is the proper one, in order that he may give ample authority to petitioners to occupy the land which has been granted to them.

The prefect, in compliance with said decree, informs the justices that they are forbidden from hindering the parties interested in said lands.

ARCHULETA.

The undersigned certify, as far as the law allows and to the best of our knowledge and belief, that there is no objection made to the settlement of the place called Red River, which embraces the Rayado and Ponil rivers, etc, it being well known and certain that it has never been used as pasture ground for cattle, and that for a long time it has not been used for hunting buffaloes; on the contrary, the settlement of that place would be a benefit to the interior settlements, affording them protection from the enemy in that direction, occupying a great number of idlers who have no occupation in the cultivation of the soil and relieving this community from a large number of persons who crowd us. The endless difficulties we experience every year on account of the scarcity of water for irrigating would be avoided. But the greatest advantage to the entire department would be that in case of a war with the Navajo Indians the stock could be fastened, during the entire year, in the vicinity of that new settlement and be protected by them. It is also certain that from here to the Arkansas river there are not more — 6 or 7 days' journey travelling with packs at a moderate pace, from here to

Rayado one and a half days' journey, from the head of the Red River to the Arkansas three to four days. In order that this certificate may have due force and effect we pray the justice of the peace of this first precinct to authorize this certificate and attach his judicial decree thereto. Attest the 14th day of March, 1844: Pablo Lascero, Buenavo Voldez, Blas Trujillo, Gregorio Lucero, Jose Miguel Sanchez, Juan Manuel Lucero, Jose Ma Valdez, Jose Ignatio de Luna, Tomas Romero, Juan Benito Valdez, and Jose Gregonio Martinez.

It passed before me, and, at the request of the subscribers thereto, by the authority which was conferred upon me by law, I authorize the present certificate, the contents thereof being true; and in order that it may appear I sign with those in my attendance, to which I certify in Taos on the 18th of March, 1844.

TOMAS LUCERO.

Attending:
RAFAEL CORDOVA.
JUAN JOSE GONZALEZ.

Duplicates of the above certificate, on the 16th of March, 1844, signed by Miguel Antonio Vigil, Antonio Jose Mondragon, Miguel Mascarenas, Manuel Fernandez, Rumaldo Targas, Jose Ignacio Gonzales, Jose Manuel Martinez, Pablo Vargas, Juan de Jesus Medina, and Buena Lavata.

At the request of the above signed, personally present, I authorize the present certificate and I know the contents thereof to be true, and in order that it may so appear I signed with those in my attendance, to which I certify.

JUAN ANTONIO LOCATO.

Attending:
JUAN DE LOS REYES ROMERO.
JOSE MATIAS CASIAS.
S. FERNANDEZ DE TAOS.

March 16th, 1844.

EXHIBIT No. 3.

Petition and Grants to Jose Manuel Royuela and John Charles Beales.

For the year- one thousand eight hundred and thirty-two and thirty-three.

To his excellency the Governor of the State of Coahuila & Texas:

SIR: The citizen Jose Manuel Royuela, a native of Saltillo, and there married, and John Charles Beales, a native of England, settled in Mexico and there married to a Mexican subject, having children, with all due respect represent to your excellency—

That being very desirous of augmenting the population, wealth, and power of the Mexican nation, and at the same time of affording to a certain number of virtuous and industrious families the means of acquiring an honorable subsistence by cultivating a tract of land in the ancient province of Texas, and being moreover acquainted

in full with the law on colonization passed by the honorable Legislature of this State on the twenty-fourth of March, one thousand eight hundred and twenty-five, by which "empresarios," or colonizing contractors, are allowed to undertake to colonize under the conditions and stipulations by said law prescribed, and being anxious to form an establishment that may be useful to a new colony and at the same time beneficial to the State on account of the advantages to accrue thereout—

We pray your excellency to accept us as such "empresarios," or colonizing contractors, and to permit us to introduce into this State, within the time that may be stipulated, two hundred Catholic families of moral and industrious habits, and for the object your excellency will be pleased to grant us the tract of land included within the following limits, viz:

Beginning at a landmark set up on a spot whereat the thirty-second degree of north latitude is crossed by the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant petitioned for by Col. Reuben Ross, from thence proceeding west along the parallel of the thirty-second degree of latitude as far as the eastern boundary of New Mexico; from thence running north on the boundary line between the provinces of Coahuila & Texas and New Mexico as far as twenty leagues of the river Arkansas; from thence east to the meridian of the one hundred and second degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross, and from thence proceeding south as far as the place of beginning.

Your petitioners as "empresarios" pray for this grant on the said conditions that it was formerly given to the late Stephen Julian Wilson, whose term of six years is about to expire, on the twenty-sixth of May, in this year, without the conditions of the grant having been fulfilled in consequence of the grantee.

Besides the conditions which are required by the colonization law of the State the empresarios and their settlers agree to observe the constitution of the Mexican nation and the private constitution of this State, as well as the general or local laws that have been or shall be hereafter promulgated. They further bind themselves to comply with the conditions on which this petition is granted, and to take up arms in defence of the rights of the nation against the savage Indians or any other enemies that may attack the country, or in any manner to alter its form of government, or to disturb the public tranquillity; and, finally, to prevent the inhabitants of the United States of North America from trading with the said Indians and providing them with arms and ammunition in exchange for horses and mules.

31

Wherefore we pray your excellency to be pleased to grant this respectful petition, which we shall consider as a favor conferred on us.

Dated at Saltillo, the thirteenth of March, one thousand eight hundred and thirty-two.

(Signed) JOSE MANUEL ROYUELA.
JOHN CHARLES BEALES.

Conditions of the Grant.

Terms on which the supreme government of the State accept the proposal of the citizens Jose Manuel Royuela and John Charles Beales for colonizing certain land with two hundred foreign families such as are not excepted by the law of the sixth of April, one thousand eight hundred and thirty.

Article 1. The government accepts the proposal made in the foregoing petition, as far as it is conformable with the law of colonization passed by the honorable Congress of the State on the twenty-fourth of March, one thousand eight hundred and twenty-five, and consequently assigns to the petitioners the tract of *a*land included within the following limits, that they may establish thereon the proposed colony: It shall begin at a landmark which shall be set up on the spot where the parallel of the thirty-second degree of north latitude crosses the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant petitioned for by Col. Reuben Ross. From thence it shall proceed along the parallel of the thirty-second degree of latitude as far as the eastern limit of New Mexico. From thence it shall ascend north on the boundary line between the provinces of Coahuila & Texas and New Mexico as far as twenty leagues of the river Arkansas. From thence it shall run east to the meridian of the hundred and second degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross; and from thence it shall proceed south as far as the place of beginning.

Art. 2. Though the boundaries of the tract set forth in the preceding clause are those assigned to Stephen Julian Wilson in a grant passed by this government on the twenty-seventh of May, one thousand eight hundred and twenty-six, yet this circumstance has not been considered an impediment to the entering into the present contract, inasmuch as the time allotted to the said Wilson for the completion of said enterprise will (expire) in the month of May of this present year without his having to this day performed the same or any part whatsoever; but if, however, in the short time that has to elapse any number of the families of that empresario should present themselves, then and in that case the present grant shall, with due respect to the part or parts performed by the first grantee thereof, be null and void to all intents and purposes.

Art. 3. In consideration of the grant hereinbefore specified the empresarios or contracting parties agree to introduce and settle, on their own account, two hundred foreign families, conforming themselves as well to the general law of the Republic as to the laws of the State in this behalf provided.

32 Art. 4. All lands whatsoever held under legal titles that may be included within the limits designated in article first shall be respected by the colonists, who shall hold under this contract, and it shall be obligatory on the part of the empresarios to see the observance of this clause.

Art. 5. The State retains to itself the right of property over all the surplus lands which shall remain of this grant after laying off those which belong to the empresarios and their settlers according to the laws in that behalf provided.

Art. 6. In conformity with article 8 of the law on colonization hereinbefore referred to the empresarios are bound to introduce the stipulated number of two hundred families within the term of six years, which shall be computed from the date hereof, under the penalty of being debarred from all the privileges and advantages afforded by the said law.

Art. 7. It shall be obligatory on the empresarios not to introduce or suffer to remain in the colony men guilty of atrocious crimes or of bad conduct; as also to endeavor that no person whatsoever shall carry on traffic in arms and ammunition with the barbarous tribes of Indians in exchange for horses and mules.

Art. 8. Whenever there shall be a sufficient number of men, the national militia shall be duly organized and regulated according to the laws of the State in that respect provided.

Art. 9. The colony shall be regulated by the person whom this government shall appoint to allot the respective settlements or possessions, and he shall duly observe the laws on colonization in force throughout the State, the general law of the eighteenth of August, one thousand eight hundred and twenty-four, and likewise the instructions to commissioners which having been appointed by the honorable Congress, taking care to afford protection within the limits of the colony to such persons only as shall be approved of by the said empresarios.

Art. 10. All official communications, instruments, and other public documents emanating from the colony must be written in the Spanish language.

Art. 11. In reference to all matters not provided for or expressed in these articles, the empresarios or the new settlers holding under them shall abide and be governed by the Federal Constitution and the laws of this State.

And his excellency the Governor of the State, as also the citizens Jose Manuel Royuela and John Charles Beales, having agreed in the articles of this contract to grant and bound respectively to the observance and performance thereof, afterwards signed the same before me, the undersigned secretary of this government.

And having been directed to give the empresarios this certified copy of all the documents relating to the grant, that they may serve them as security and as formal title (or as a title in form) thereto, the originals will, according to law, remain filed and recorded in the secretary's office under my charge.

Dated, city of Leona Vicario, the fourteenth day of March, one thousand eight hundred and thirty-two.

(Signed) JOSE MARIA DE LETONA.
JOHN CHARLES BEALES.
JOSE MANUEL ROYUELA.

SANTIAGO DEL VALLE, *Secretary.*

33 The foregoing is copied from the original documents filed and recorded in the secretary's office under my charge, whence it was ordered taken by his excellency the Governor.

City of Leona Vicario, the fourteenth of March, one thousand eight hundred and thirty-two.

(Signed) SANTIAGO DEL VALLE, *Secretary.*

EXHIBIT No. 4.

Deed of Royuela to Beales.

(Second stamp.) (Stamp.) (Twelve rials.)

For the years one thousand eight hundred and thirty-two and three.

Whereas, in the city of Leona Vicario, on the eleventh day of October, one thousand eight hundred and thirty-two, before me, the citizen Victoriana de Cardenas, third justice of the peace and a judge of the court of the first instance (or common pleas) of this city and its jurisdiction, acting in the absence of a notary public, there being none residing within the district (I, the said judge, being attended and assisted by the proper witnesses named at the foot hereof), appeared personally the citizens Don Manuel Royuela, a resident of this city, and as such personally known to me, and by these presents declared and said as follows, to wit:

That he does hereby, in all and every manner that the same may by law be done, make over, transfer, and assign to Doctor John Charles Beales all the proceeds which shall arise from or out of the settlement or colonization which they jointly are to effect of certain lands situated in the department of Bejar that were granted to them by the supreme government of the State on the fourteenth of March, one thousand eight hundred and thirty-two, and that, moreover, the said Don Manuel Royuela hereby assigns and conveys all the right, claim, or title whatsoever that he may have to the said lands to the intent that the hereinbefore-named John Charles Beales may now and ever be considered and reputed to be the sole and lawful empresario thereof, and the party who from this date will be charged with the performance of the contract entered into with the government for the purpose of rettling and colonizing the said grant of lands referred to in this assignment, the said Don Manuel Royuela hereby protesting and declaring that he will not revoke these presents either by his last will and testament or any other act or deed which he can, during life, sign and execute, acknowledging, as he does hereby acknowledge, himself to be sufficiently compensated for the same, and that he makes this assignment to the said John Charles Beales for divers valuable considerations at different times from him had and received.

Finally, that the said party hereto is desirous that this assignment shall be made known to the said Doctor John Charles Beales, that he may accept the same and have it recorded, that the said Don Manuel Royuela may no longer be at liberty to assign the said lands

or any part thereof to any person whomsoever; and in order, moreover, that it may not even be necessary to give notice of this assignment to the said John Charles Beales, the said Don Manuel Royuela gives this testimony thereof, which shall be considered equivalent to his having declared his acceptation of the same.

And for the faithful performance of all the matters and clauses herein contained the said Don Manuel Royuela binds his person and property, both present and future, with confession of judgment,
hereby voluntarily placing the same under the jurisdiction
34 and at the disposal of the judges and justices authorized to
take cognizance thereof, that they may compel the said party by all legal means to perform these presents the same as if sentence without right of appeal had been passed against him, disclaiming and renouncing all such laws and decisions as might exist in his favor.

And the said Jose Manuel Royuela signed these presents; acting as witnesses to the execution thereof, Antonio Espionosa, Marcelo de Cullae, and Rafael de Leon, all citizens and resident- of this city.

JOSE MANUEL ROYUELA.
VICTORIANO DE CARDENAS.

Which I attest:
JOSE NASARIO ORTIS,
FRANCISCO DE LA FUENTE, *Clerks.*

The foregoing is copied from the original instrument and made on two leaves of paper, bearing the second stamp, according to law in that behalf provided, which I, the undersigned, justice of the peace, acting as aforesaid, duly attest. Dated as above.

VICTORIANO DE CARDENAS.

FRANCISCO DE LA FUENTE,
JOSE NASARIO ORTIS, *Clerks.*

Notarial and Consular Certificates. Attestation.

The citizens Vincente Valdez and Ignacio de Arizpe, first and second justices of the peace and judges of the court of first instance (or common pleas) of this city and its jurisdiction, acting in the absence of a notary public, there being none residing within the district, certify to the best that our duty, ability, and authority will allow that the signature of the citizen Victoriano de Cardenas written above is the same which — affix- to all instruments both in and out of court, and that he is and bears the title of third justice of the peace and judge of the court of first instance.

In testimony whereof we have signed these presents in the city of Leona Vicario on the eleventh day of October, one thousand eight hundred and thirty-two.

VINCENTE VALDEZ.
IGNACIO DE ARIZPE.

MARIA DEL MORAL,
FRANCISCO DE LA FUENTE, *Clerks.*

EXHIBIT No. 5.

I, John C. Beales, of the city of New York, physician, do hereby make, publish and declare this my last will and testament, in words following that is to say.

First.

I do hereby give, devise and bequeath all my property and estate of every kind and description unto James Alfred Greaves Beales and Adelaide Kerrison Jaffray who are my children and Anita Exter who is the daughter of my deceased wife, to be equally divided between them, share and share alike, to have and to hold the same to them, their heirs, executors administrators and assigns forever, and in case of the death of one or more of the said three devisees and legatees before my decease without leaving lawful issue him, her or them surviving, and which issue shall be living at the time of my decease, then and in such case, I give, devise and bequeath my said property and estate to the survivor or survivors of them, him, her or their heirs. executors, administrators and assigns to be equally divided between them, if more than one; and in case of the death of any one or more of the said three devisees and legatees before my decease, leaving lawful issue, who shall be living at my decease, then and in such case I give, devise and bequeath to such issue, their heirs, executors, administrators and assigns, the share or portion of my said property and estate which the said parent of such issue would have taken under this will, if such parent had been living at the time of my decease: such issue to take such parent's portion in equal shares.

Second.

I do hereby nominate, constitute and appoint Eugene Kelly, Stephen B. Nash, Lloyd W. Wells, J. McL. Nash, all of the city of New York, the executors of this my last will and testament, and direct them to pay out of my said estate all my just debts and liabilities and funeral expenses hereby revoking any other and former wills heretofore at any time by me made.

In witness whereof, I have hereunto set my hand and seal, this second day of July one thousand eight hundred and seventy three.

JOHN CHARLES BEALES M. D. [L. S.]

Signed, sealed, published and declared by the above named testator as and for his last will and testament, to us and in our presence, and we have at his request and in his presence and in the presence of each other, hereunto subscribed our names as witnesses on the day of the date thereof.

EDMUND DWIGHT
98 *West 19th. Street, New York.*
BRIDGET DEVLIN,
12 *West 19th. Street New York.*
ANN WILSON,
469 *6th Avenue, New York.*

EXHIBIT No. 6.

The people of the State of New York to James A. G. Beales, of the city of New York, a son and a legatee named in the last will and testament of John Charles Beales, deceased, send greeting:

Whereas said John Charles Beales lately departed this life, having previously duly made and executed his last will and testament; and

Whereas said will was, on the eighteenth day of December, in the year one thousand eight hundred and seventy-nine, duly admitted to probate by Delano C. Calvin, Esquire, surrogate of the county of New York; and

Whereas the said testator named and appointed Stephen B. Nash, John McL. Nash, L. W. Wells, and Eugene Kelly executors thereof; and

Whereas the said named executors have all renounced their right to act as such executors; and

Whereas the said testator was at or immediately previous to his death an inhabitant of the county of New York, by means whereof the proving and registering of the said will and the ordering and granting administration of all and singular the moods, chattels, and credits whereof the said testator died possessed in the State of New York, and also the auditing, allowing, and final discharging the account thereof, doth appertain unto us, *and* we being desirous that said will should be observed and performed, and that the goods, chattels, and credits of the said testator be well and faithfully administered, applied, and disposed of, do grant unto you, the said James A. G. Beales, full power and authority, by these presents, to administer and faithfully dispose of all and singular the goods, chattels, and credits, and to ask, demand, recover, and receive the debts which unto the said testator whilst living and at the time of his death did belong, and to pay the debts which the said testator did owe, as far as such goods, chattels, and credits will thereto extend and the law require, hereby requiring you to observe and perform the said last will and testament and to observe all the duties to which you would have been subject if you had been named executor thereof.

36

And we do, by these presents, depute, constitute, and appoint you, the said James A. G. Beales, administrator, with the will annexed, of all and singular the goods, chattels, and credits which were of said John Charles Beales, deceased.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

Witness Delano C. Calvin, surrogate of said county, at the city of New York, this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

D. C. CALVIN, *Surrogate.*

STATE AND COUNTY OF NEW YORK, } ss:
Surrogate's Office,

I, Peter V. Burtsell, clerk to the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the letters of administration, with the will annexed, granted upon the estate of John Charles Beales, deceased, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testimony whereof I have hereunto set my hand and affixed the seal of office of said surrogate this third day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

PETER V. BURTSELL,
Clerk to the Surrogate's Court.

STATE AND COUNTY OF NEW YORK, } ss:
Surrogate's Office,

I, Delano C. Calvin, surrogate of said county and presiding magistrate of the surrogate's court, do hereby certify that the foregoing exemplification of the letters of administration, with the will annexed, granted upon the estate of John Charles Beales, deceased, is authenticated in due form and by the proper officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court this third day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

D. C. CALVIN, *Surrogate.*

EXHIBIT No. 7.

Copy of Deed. Heirs of Beales to Childs.

This indenture, made the seventeenth day of November, in the year of our Lord one thousand eight hundred and eighty-six, between James A. G. Beales, as administrator, with the will annexed, of Doctor John Charles Beales, late of the city of New York, deceased, and the said James A. G. Beales, individually; Adelaide K. Jaffray, and Anita Exter, single woman, all of the city, county, and State of New York, as heirs and devisees of the said Doctor John Charles Beales; Eugenia K. Beales, wife of the said James A. G. Beales, and John Hamilton Jaffray, husband of the said Adelaide K. Jaffray,
37 parties of the first part, and Newton B. Childs, of Kansas City, State of Missouri, party of the second part, witnesseth:

That the parties of the first part, for and in consideration of the sum of twelve thousand five hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part at or before the receiving and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, remised, released, and quitclaimed, and by these presents do grant, remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever all the right, title, and interest

of the said parties of the first part and each of them in and to that certain tract of land, situate formerly in the State of Coahuila & Texas and now in the United States of America, known as the Arkansas grant and described in said grant as follows, viz:

Beginning at a landmark which shall be set up on the spot where the parallel of the thirty-second degree of latitude crosses the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant petitioned for by Col. Reuben Ross, from thence it shall proceed west along parallel of the thirty-second degree of latitude as far as the eastern limit of New Mexico; from thence ascend to the north on the boundary line of the Provinces of Coahuila & Texas and New Mexico as far as twenty leagues south of the Arkansas river; from thence it shall run east to the meridian of the hundred and second degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross, and from thence it shall proceed south as far as the place of beginning—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profit thereof, and also all the estate, right, title, interest, choses in action, rights of demise, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above-described premises and every part or parcel thereof, together with all the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said James A. G. Beales, Adelaide K. Jaffray, and Anita Exter, each for himself or herself and his or her heirs and not for each other, the above-described and hereby granted and released premises and every part and parcel thereof, with the appurtenances, unto the party of the second part, his heirs and assigns, against the said parties of the first part, their heirs, and against all and every person whomsoever lawfully claiming or to claim the same or any part thereof by, from, or under him, her, them, or any of them shall and will warrant and by these presents forever defend.

This deed being given in triplicate, marked respectively Nos. 1, 2, and 3, each conveying the same property, the reason for making three deeds being that the property described in each deed, although the same, is located in different States, Territories, or localities.

In witness whereof the said parties of the first part have hereunto set their hands and seals this seventeenth day of November, 1886.

(Signed) JAMES A. G. BEALES, *Adm.*
JAMES A. G. BEALES.
ADELAIDE K. JAFFRAY.
[SEALS.] ANITA EXTER.
J. HAMILTON JAFFRAY.
EUGENIA K. BEALES.

38 STATE OF NEW YORK, } ss:
City and County of New York, }

On the seventeenth day of November, A. D. eighteen hundred and eighty-six, before me, a notary public within and for the county and State aforesaid, residing in the county of Kings, and duly authorized to take acknowledgments for the city and county of New York, personally came John Hamilton Jaffray and Adelaide K. Jaffray, his wife; James A. G. Beales and Eugenia K., his wife, and Anita Exter, to me personally known to be the same persons whose names are signed and who are the parties to the within deed of conveyance, and acknowledged that they signed, sealed, and executed the same for the uses and purposes therein mentioned and set forth; and the said Adelaide K. Jaffrey and Eugenia K. Beales, be— by me first informed of the contents of the said deed of conveyance, severally confessed, on an examination separate and apart from and independent of their respective husbands, that they severally signed, sealed, and executed the same freely and voluntarily for the uses and purposes therein mentioned and set forth, without any compulsion or illicit influence of their said respective husbands.

Given under my hand and official seal this the day and year last above written.

CHARLES PHILLIPS,
[SEAL.] *Notary Public, Kings County, New York.*

EXHIBIT No. 8.

Copy of Deed of Childs to the Inter-State Land Company.

This indenture, made the twenty-third day of November, in the year of our Lord one thousand eight hundred and eighty-six, between Newton B. Childs and Nellie B. Childs, his wife, of Kansas City, Jackson county, State of Missouri, parties of the first part, and the Inter-State Land Company, a corporation duly chartered under the laws of Colorado, parties of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of two hundred and fifty thousand (and other valuable consideration) dollars, lawful money of the United States of America, to them in hand paid by the party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, remised, released, and quit-claimed, and by these presents do grant, remise, release, and quit-claim, unto the said party of the second part, its successors and assigns forever, all the right, title, and interest of the parties of the first part in and to that certain tract of land, situate formerly in the State of Coahuila & Texas, and now in the United States of America, known as the Arkansas grant, described in said grant as follows, viz: Beginning at a landmark which shall be set up on the spot where the parallel of the thirty-second degree of latitude is crossed by the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant

petitioned for by Col. Reuben Ross, from thence it shall proceed along the parallel of the thirty-second degree of latitude as far as the eastern limit of New Mexico; from thence ascend to the north along the boundary line between the provinces of Coahuila & Texas and New Mexico, as far as twenty leagues south of the Arkansas river; from thence it shall run east to the meridian of the one hundred and second degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross, and from thence it shall proceed south as far as the place of begin-
39 ning, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, choses in action, rights of demise, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successor and assigns forever; subject, nevertheless, to the terms and provisions of a certain trust deed, bearing even date herewith, made and executed by the said Newton B. Childs to John Phillips and Charles May to secure the payment of two hundred and fifty certain bonds of the said party of the second part, amounting in the aggregate to the sum of two hundred and fifty thousand dollars, which said bonds, with the interest coupons attached, have been issued by the said party of the second part as part of the consideration for this conveyance. And the said Newton B. Childs and Nellie B. Childs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the party of the second part, its successors and assigns, against the said parties of the first part and their heirs and against all and every persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, or under them, except as aforesaid, shall and will warrant and by these presents forever defend; this deed being given in duplicate, marked respectively Nos. 1 and 2, each conveying the same property, the reason for making two deeds being that the property described in each deed, although the same, is located in different States, Territories, and localities.

In witness whereof the said parties of the first part have hereunto set their hands and seals.

NEWTON B. CHILDS. [SEAL.]
NELLIE B. CHILDS. [SEAL.]

Signed, sealed, and delivered in the presence of—

S. F. NEELY.
M. SPYER.

STATE OF MISSOURI, }
County of Jackson, } *ss:*

On this twenty-sixth day of November, A. D. eighteen hundred and eighty-six, before me, a notary public within and for the county of Jackson, State of Missouri, and duly authorized to take acknowledgements for said county, personally came Newton B. Childs and Nellie B. Childs, his wife, to me personally known to be the same persons whose names are signed to and who are parties to the within deed of conveyance, and acknowledged that they signed, sealed, and executed the same freely and voluntarily for the uses and purposes therein mentioned and set forth. And the said Nellie B. Childs, being by me first informed of the contents of the said deed of conveyance, confessed, on an examination separate and apart and independent of her said husband, that she signed, sealed, and executed the same freely and voluntarily for the uses and purposes therein mentioned and set forth, without any compulsion or the illicit influence of her said husband.

Given under my hand and official seal this the day and year last above written. My commission as notary public will expire April 8th, 1889.

[SEAL.] S. W. SPANGLER,
Notary Public.

40 STATE OF MISSOURI, }
County of Jackson, } *ss:*

I, M. S. Burr, clerk of the county court within and for the county and State aforesaid, do hereby certify that S. W. Spangler, whose name appear- to the foregoing acknowledgement, is and was at the time of signing the same a notary public within and for said county, duly appointed, commissioned, and qualified, and that full faith and credit is and ought to be given to all his official deeds as such; that his commission was dated eighth (8) day of April, 1885, and will expire the 8th day of April, 1889, and that the same is executed according to the laws of Missouri.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Independence, this 13th day of December, A. D. 1886.

[SEAL.] M. S. BURR, *Clerk.*

(Endorsed:) No. 2365. U. S. circuit court. Equity. The Inter-State Land Co. *v.* The Maxwell Land Grant Co. Bill of complaint. Filed Dec. 20, 1888. William A. Willard, clerk.

And the said subpœna and marshal's return is in words and figures as follows, to wit:

Subpœna.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to the Maxwell Land Grant Company, Greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in February next (it being the 4th day of February, A. D. 1889), to answer the bill of complaint of the Inter-State Land Company this day filed in the office of the clerk of said court in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgement being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

41 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver aforesaid, this 20th day of December, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 113th year.

WILLIAM A. WILLARD, *Clerk,*
[SEAL.] By F. W. TUPPER, *Deputy Clerk.*

Memorandum.

The above-named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against it as confessed and a decree entered accordingly.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

DENVER, *Dec. 27th,* 1888.

I have duly executed the within writ by delivering to Charles E. Gast, the solicitor for the Maxwell Land Grant Company in this district, the manager being out of my district, personally a true copy of the within writ, at the place and time as follows, to wit, on the 24th day of December, A. D. 1888, at Pueblo, in Pueblo county.

This writ therefore returned executed, as the law directs, this 27th day of December, A. D. 1888.

ZEPH. T. HILL, *Marshal*,
By J. P. MESSENGALE,
Deputy Marshal.

Marshal's fees:

Service, 1 person's, at $2.00 each	$2 00
Mileage, 125 miles, at 6c., going only	7 50
Total	$9 50

(Endorsed:) Gen. No., 2365. Circuit court of the United States for the district of Colorado. In chancery. The Inter-State Land Company *vs.* The Maxwell Land Grant Co. Subpœna. Returnable to rule day, first Monday in February, A. D. 1889. William A. Willard, clerk. Filed this 28 day of Dec., A. D. 1888. William A. Willard, clerk, by F. W. Tupper, deputy clerk. John L. Jerome, of Denver, compl't's sol'r.

42 And afterwards and on, to wit, the 16th day of January, A. D. 1889, came the said defendant, The Maxwell Land Grant Company, by Chas. E. Gast, its solicitor, and filed in said court and in said cause its demurrer to the bill heretofore filed herein.

And the said demurrer is in words and figures as follows, to wit:

Demurrer to Bill.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court.

THE INTER-STATE LAND COMPANY, Complainant, }
vs.
THE MAXWELL LAND GRANT COMPANY, Defendant. }

The demurrer of the Maxwell Land Grant Company to the bill of complaint of the Inter-State Land Company, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not by its said bill made such a case as entitles it in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint this defendant doth demur to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill; and it

prays to be hence dismissed with its reasonable costs in this behalf sustained.

CHAS. E. GAST,
JAMES M. JOHN &
FRANK SPRINGER,
Solicitors for Def't.

43 I certify that in my opinion the foregoing demurrer of The Maxwell Land Grant Company, defendant, to the bill of complaint of The Inter-State Land Company, complainant, is well founded in law and proper to be filed in the above cause.

CHAS. E. GAST,
Counsel for Def't.

UNITED STATES OF AMERICA, }
District of Colorado, County of Pueblo, } *ss:*

I, Charles E. Gast, being duly sworn, depose and say that I have read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

CHAS. E. GAST.

Subscribed and sworn to before me this 14th day of January, A. D. 1889.

ALLEN J. BEAUMONT,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) 2365. In the circuit court of the United States, district of Colorado. The Inter-State Land Company, complainant, *vs.* The Maxwell Land Grant Company, defendant. Demurrer to bill of complaint. Filed Jan. 16, 1889. William A. Willard, clerk. C. E. Gast, sol'r for def't.

And afterwards and on, to wit, the 20th day of December, A. D. 1889, there was handed down and filed in said court and in said cause the opinion of the circuit judge on demurrer.

And the said opinion is in words and figures as follows, to wit:

Opinion on Demurrer to Bill.

44 In the Circuit Court of the United States for the District of Colorado.

THE INTER-STATE LAND COMPANY
against
THE MAXWELL LAND GRANT COMPANY.

Also—

THE MAXWELL LAND GRANT COMPANY
against
VICENTE PRETECA *et al.*

Opinion, Brewer, C. J.

The single question in these two cases arises upon what is known as the Beales grant, a grant made in the year 1832 by the Governor

of the State of Coahuila and Texas. The petition and grant are as follows:

"Petition and grants to Jose Manuel Royuela and John Charles Beales for the year- one thousand eight hundred and thirty-two and thirty-three.

To his excellency the Governor of the State of Coahuila & Texas.

SIR: The citizen Jose Manuel Royuela, a native of Saltillo and there married, and John Charles Beales, a native of England, settled in Mexico and there married to a Mexican subject, having children with all due respect represent to your excellency —

That being very desirous of augmenting the population, wealth, and power of the Mexican nation and at the same time of affording to a certain number of virtuous and industrious families the means of acquiring an honorable subsistence by cultivating a tract of land in the ancient province of Texas, and being moreover acquainted in full with the law of colonization passed by the honorable Legislature of this State on the twenty-fourth of March, one thousand eight hundred and twenty-five, by which "empresarios" or
45 colonizing contractors are allowed to undertake to colonize under the conditions and stipulations by said law prescribed, and being anxious to form an establishment that may be useful to a new colony and at the same time beneficial to the State on account of the advantages to accrue thereout—

We pray your excellency to accept us as such "empresarios" or colonizing contractors and to permit us to introduce into this State, within the time that may be stipulated, two hundred Catholic families, of moral and industrious habits, and for the object your excellency will be pleased to grant us the tract of land included within the following limits, viz:

Beginning at a landmark set up on a spot whereat the thirty-second degree of north latitude is crossed by the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant petitioned by Col. Reuben Ross, from thence proceeding west along the parallel of the thirty-second degree of latitude as far as the eastern boundary of New Mexico; from thence running north on the boundary line between the provinces of Coahuila & Texas and New Mexico as far as twenty leagues of the river Arkansas; from thence east to the meridian of the hundred and second degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross, and from thence proceeding south as far as the place of beginning.

Your petitioners as "empresarios" pray for this grant on the said conditions that it was formerly given to the late Stephen Julian Wilson, whose term of six years is about to expire, on the twenty-sixth of May in this year, without the conditions of the grant having been fulfilled in consequence of the grantee.

46 Besides the conditions which are required by the colonization law of the State the empresarios and their settlers agree

to observe the constitution of the Mexican nation and the private constitution of this State, as well as the general and local laws that have been or shall be hereafter promulgated. They further bind themselves to comply with the conditions on which this petition is granted and to take up arms in defense of the rights of the nation against the savage Indians or any other enemies that may attack the country or in any manner to alter its form of government or to disturb the public tranquil-ity; and, finally, to prevent the inhabitants of the United States of North America from trading with the said Indians and providing them with arms and ammunition in exchange for horses and mules.

Wherefore we pray your excellency to be pleased to grant this respectful petition, which we shall consider as a favor conferred on us.

Dated at Saltillo the thirteenth of March, one thousand eight hundred and thirty-two.

(Signed) JOSE MANUEL ROYUELA.
JOHN CHARLES BEALES.

Conditions of the Grant.

Terms on which the supreme government of the State accept the proposal of the citizens Jose Manuel Royuela and John Charles Beales for colonizing certain land with two hundred foreign families such as are not excepted by the law of the sixth of April, one thousand eight hundred and thirty.

Article 1. The government accepts the proposal made in the foregoing petition as far as it is conformable with the laws of
47 colonization passed by the honorable Congress of the State on the twenty-fourth of March, one thousand eight hundred and twenty-five, and consequently assigns to the petitioners the tract of land included within the following limits: That they may establish thereon the proposed colony, it shall begin at a landmark which shall be set up on the spot where the parallel of the thirty-second degree of north latitude crosses the meridian of the hundred and second degree of longitude west from London, said spot being at the southwest corner of the grant petitioned for by Col. Reuben Ross; from thence it shall proceed along the parallel of the thirty-second degree of latitude as far as the eastern limit of New Mexico; from thence it shall ascend north on the boundary line between the provinces of Coahuila & Texas and New Mexico as far as twenty leagues of the river Arkansas; from thence it shall run east to the meridian of the hundred and second degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross, and from thence it shall proceed south as far as the place of beginning.

Art. 2. Though the boundaries of the tract set forth in the preceding clause are those assigned to Stephen Julian Wilson in a grant passed by this government on the twenty-seventy of May, one thousand eight hundred and twenty-six, yet this circumstance has not

been considered an impediment to the entering into the present contract, inasmuch as the time allotted to the said Wilson for the completion of said enterprise will (expire) in the month of May of this present year without his having to this day performed the same or any part whatsoever; but if, however, in the short time that has to elapse, any number of the families of that empresarios should present themselves, then and in that case the present grant shall,
48 with due respect to the part or parts performed by the first grantee thereof, be null and void to all intents and purposes.

Art. 3. In consideration of the grant hereinbefore specified the empresarios or contracting parties agree to introduce and settle, on their own account, two hundred foreign families, conforming themselves as well to the general law of the Republic as to the laws of the State in this behalf provided.

Art. 4. All lands whatsoever held under legal titles that may be included within the limits designated in article first shall be respected by the colonists who shall hold under this contract, and it shall be obligatory on the part of the empresarios to see the observance of this clause.

Art. 5. The State retains to itself the right of property over all the surplus lands which shall remain of this grant after laying off those which belong to the empresarios and their settlers according to the laws in that behalf provided.

Art. 6. In conformity with article 8 of the law of colonization hereinbefore referred to the empresarios are bound to introduce the stipulated number of two hundred families within the term of six years, which shall be computed from the date hereof, under the penalty of being debarred from all the privileges and advantages afforded by the said law.

Art. 7. It shall be obligatory on the empresarios not to introduce or suffer to remain in the colony men guilty of atrocious crimes or of bad conduct; as also to endeavor that no person whatsoever shall carry on traffic in arms and ammunition with the barbarous tribes of Indians in exchange for horses and mules.

Art. 8. Whenever there shall be a sufficient number of men the national militia shall be duly organized and regulated accord-
49 ing to the laws of the State in that respect provided.

Art. 9. The colony shall be regulated by the person whom this government shall appoint to allot the respective settlements or possessions, and he shall duly observe the laws on colonization in force throughout the State, the general law of the eighteenth of August, one thousand eight hundred and twenty-four, and likewise the instructions to commissioners which have been appointed by the honorable Congress, taking care to afford protection within the limits of the colony to such persons only as shall be approved of by the empresarios.

Art. 10. All official communication, instruments, and other public documents emanating from the colony must be written in the Spanish language.

Art. 11. In reference to all matters not provided for or expressed in these articles, the empresarios or the new settlers holding under

them shall abide and be governed by the Federal Constitution and the laws of this State.

And his excellency the Governor of the State, as also the citizens Jose Manuel Royuela and John Charles Beales, having agreed in the articles of this contract to grant and bound respectively to the observance and performance thereof, afterwards signed the same before me, the undersigned secretary of this government.

And having been directed to give the empresarios this certified copy of all the documents relating to the grant, that they may serve them as security and as formal title (or as a title in form) thereto, the originals will according to law remain filed and recorded in the secretary's office under my charge.

Dated, city of Leona Vicario, the fourteenth day of March, one thousand eight hundred and thirty-two.

50 (Signed) JOSE MARIA DE LETONA.
JOHN CHARLES BEALES.
JOSE MANUEL ROYUELA.

SANTIAGO DEL VALLE, *Secretary.*

The foregoing is copied from the original documents filed and recorded in the secretary's office under my charge, whence it was ordered taken by his excellency the Governor.

City of Leona Vicario, the fourteenth of March, one thousand eight hundred and thirty-two.

(Signed) SANTIAGO DEL VALLE, *Secretary.*"

The same year of the grant and on October 11 Royuela conveyed by deed to Beales. He remained the owner until his death, in 1879. He disposed of his property by will made in 1873, and by sundry conveyances from his devisees the title has passed to the complainant in the one suit and the cross complainant in the other, The Inter-State Land Company. The question is presented by demurrers, so that the genuine-ss and validity of the documents are not open to question. The contention on the one side is that this was a grant passing title subject to defeasance; that the grantor never insisted upon any defeasance, and, indeed, could not, because before the time within which the conditions subsequent were to be performed the State of Texas had revolted from the Mexican Government and established an independent nation of its own, and that by this action performance of the conditions was rendered impossible. On the other hand, the contention is that the grant was in the nature of a float; that by it certain out-boundaries of a large tract were designated within which the grantees, upon performing certain actions, would obtain perfect title to prescribed amounts of land, and
51 that, never having performed any of the conditions or thus paid any of the consideration, no title was ever vested in the grantees to any portion of the land. The area of this tract, as stated by counsel, is over sixty millions of acres. The fact that arrests attention at the outset is that the claim of title to this tract, an empire in itself, has remained so long unasserted. For over fifty years it has rested quietly, at peace with all the world and all the world

at peace with it. The grantee and single owner lived for forty-seven years after receiving the grant. Litigation at great expense through many years, passing to the Supreme Court of the United States, has been carried on respecting large bodies of land within this grant claimed on other and independent titles, and now for the first time the court are asked to pass upon this grant. It would seem as though the grantee did not understand the grant to be other than a float, as claimed. While, of course, this does not determine the legal effect of the instrument, it is certainly significant as interpreting the understanding of the parties, and it is familiar that oftentimes the conduct of parties to a contract has great weight in determining the real meaning of doubtful words and phrases of it.

Again, it appears from article two that the tract in question was one assigned to Stephen Julian Wilson in a grant of May 27, 1826, and an examination of the terms of that grant shows that it was substantially the same as this. By that, as by this, a term of six years was given for the performance of the contract, which term had not expired; and yet, as stated in article two, this fact was not supposed to restrict the power of the government to make this concession. Yet if, as claimed, these grants were deeds with conditions subsequent, title passing subject to defeasance, we should
52 scarcely expect a second grant before actual forfeiture of the first; and in the latter part of article two it is provided that if in the short time to elapse before the expiration of the six years any number of the families of that empresario should present themselves, then this grant with respect to the part or parts performed shall be null and void. In other words, this contemplates that the introduction of a number of families by the first grantee, Wilson, would give him and them title to portions of the grant, a title not acquired until such performance—a view of the meaning of the contract consistent with that claimed by the demurrant and opposed to that insisted upon by the complainant.

But these are preliminary matters. We must look to the instrument itself and to the law under which the concession was made to determine its real meaning, and noticing the first article of the grant, the article which may be considered as most nearly like the granting clause in an ordinary deed, we find that the language is that the government assigns to the petitioners the tract of land included within the following limits that they may establish thereon the proposed colony. Now, the word assign may mean convey, although it is not the ordinary word used in respect to land transfers, or it may mean a setting apart of the land as a tract upon which the petitioners can perform their proposed colonization. That the latter is the true meaning is indicated by the purpose for which the land is expressly assigned, to wit, as a place for the proposed colony. The language is not granted on condition that they establish a colony, but assigned as a place where they may establish a colony, and in what may be considered the recital preliminary to the grant we find the articles are declared to be the terms on which the supreme
53 government accepts the proposal for colonizing certain lands with two hundred foreign families; so the colonization was

the object of the contract, and it must be assumed that no more rights were intended to be conveyed than those which resulted from colonization.

Again, by art. 4 it is provided that all lands within those limits held by legal titles should be respected by the colonists who held under this contract. True, land previously conveyed would, as a matter of law, be excepted from the grant; but the article also speaks of this as a contract, and implies that colonists under the petitioners would acquire title to some portion of the tract. Of course, if this was a grant passing title to the grantees this article was unnecessary, and it is significant as calling the instrument a contract and setting it over against legal title.

But article five is still more significant, providing that the State retains the right of property over all the surplus lands which shall remain of this grant after laying off what belongs to the empresarios and their settlers. In other words, the State retains title to part of the tract—a thing impossible if the instrument was a grant passing title to all. It further implies that only part of the land would belong to the empresarios and their settlers, and that it was to be set apart to them in accordance with the laws of the State. This is exactly the idea contended for by the demurrant, that the instrument taken as a whole was simply a designation of a large tract with given outboundaries, within which the petitioners could by colonization obtain title to certain amounts of land as prescribed by law.

All these provisions of the instrument make strongly against the contention of complainant, and while there are some clauses
54 in the instrument which make in favor of this contention, as, for instance, the frequent use of the word grant, the specification in article three that in consideration of the grant the empresarios agree to introduce and settle two hundred foreign families, and the provision that a certified copy of all of the documents relating to the grant shall be given to the empresarios to serve them as security and as formal title; yet, if taking the instrument as a whole, there be conflicting provisions, and the real meaning by reason thereof be doubtful, the familiar rule applicable to all concessions from a government is that the concession or grant is to be construed strictly against the grantee and in favor of the government, grantor. United States *vs.* Cattle Co., 33 Fed. Rep., 323. So, if inquiry was limited to the instrument itself it would have to be adjudged that it was not a grant passing title, but a designation and setting apart of a tract within which the petitioners might by performing certain acts acquire title to some land.

But we are not limited to the instrument itself. It is made in pursuance of the law of the State, and that law must be examined in determining the meaning of the instrument. This would be the general rule, and, in addition, this grant in terms refers to the law as fixing the rights of the petitioners. The first article declares that the Government accepts the proposal as far as conformable with the laws of colonization passed by the honorable congress of the State on the 24th of March, 1825. Thus the particular statute which we

are to examine is expressly referred to and by implication made a part of the contract. Articles 3, 5, 6, 8, & 9 also contain references to the statute and article 11 directly declares that in reference to all matters not provided for or expressed in those articles the
55 expresarios of the new settlers shall abide and be governed by the constitution and laws. The act of March 24th, 1825, referred to consists of forty-eight articles. It may be found in Rockwell's Spanish and Mexican Law, page 641. It purports to be a colonization law, and the first few articles refer simply to the admission and rights of foreigners. Article eight is as follows:

"The projects for new settlements, in which one or more persons offer to bring at their expense one hundred or more families, shall be presented to the government, and if found conformable with this law they will be admitted, and the government will immediately designate to the contractors the land where they are to establish themselves, and the term of six years, within which they must present the number of families they contracted for, under the penalty of losing the rights and privileges offered in their favor in proportion to the number of families which they fail to introduce, and the contract totally annulled if they do not bring at least one hundred families."

Article eleven defines the unit of measurement. Articles twelve, thirteen, and fourteen read thus:

"Art. 12. Taking the above unity as a basis and observing the distinction which must be made between grazing land, or that which is proper for raising stock, and farming land, without the facility of irrigation, this law grants to the contractor or contractors for the establishment of a new settlement, for each hundred families which he may introduce and establish in the State, five sitios of grazing land, and five labors at least, the one-half of which shall be without the facility of irrigation; but they can only receive this premium for eight hundred families, although a greater number should
56 be introduced, and no fraction whatever less than one hundred shall entitle them to any premium, not even proportionally."

"Art. 13. Should any contractor or contractors, in virtue of the number of families which he may have introduced, acquire in conformity with the last article more than eleven square leagues of land, it shall nevertheles be granted, but subject to the condition of alienating the excess within twelve years, and if it is not done the respective political authority shall do it by selling it at public sale, delivering the proceeds to the owners after deducting the costs of sale."

"Art. 14. To each family comprehended in a contract whose sole occupation is cultivation of land one labor shall be given; should he also be a stock-raiser, grazing land shall be added to complete a sitio, and should his only occupation be raising of stock, he shall only receive a superficie of grazing land equal to twenty-four million square bars."

Article 15 and 16, like article 14, refer to amounts of land to be given. On Sept. 4, '27, a series of instruction to commissioners appointed by the Legislature for the partition of lands among the

new colonists was issued by the Government. See Rockwell's Spanish and Mexican Law, 649. Among them, article four reads thus:

"Art 4. He shall issue in the name of the State the titles for land in conformity with the law, and put new colonists in possession of their lands with all legal formalities and the previous citation of adjoining proprietors, should there be any."

And article twenty-four thus:

"Art. 24. He shall take special care that the portions of land granted to the colonists by article- 14, 15, and 16 shall be measured by the surveyors with accuracy and not permit any one to include more land than is designated by law, under the penalty of
57 being personally responsible."

Reference in these articles to articles 14, 15, and 16 is to articles in the colonization law. Now, article eight of the law quoted above prescribed what the Government will do when the petition of an empresario for colonization is presented. If found conformable with this law the Government will immediately "designate" to the contractors land whereon to establish themselves. This, of course, does not mean that the Government will grant them the land, but simply that it will select and designate the place where a colony may be settled. So that when we find in the first article of the grant that the Government assigns a given tract to the petitioners for the establishment of a colony the assignment is made by virtue of this article eight of the law, and means simply the selection of a place for the colony. Passing on to article 12, we find what the Government will give to the empresario specifically declared, to wit: For each hundred families, five sitios of grazing land and five labors, at least the one-half of which shall be without the facility of irrigation. This article makes plain the meaning of article three of the grant and shows that that means simply that in consideration of the setting apart of this large tract of land the petitioners agree to introduce and settle on that land two hundred foreign families. Articles 12 and 13 together provide what shall be given to the empresario who introduces eight families and receives more than eleven square leagues of land. This last article shows a clear intent that no party should obtain title to more than eleven square leagues, no matter what services in colonization he may render to the State. Articles 14, 15, and 16 provide what the individual settlers are to receive, and sections from 12 to 16, inclusive, explain fully the meaning of article five
58 of the grant, which declares that the State retains title to all the surplus land within the grant after laying off that which belongs to the empresarios and their settlers. Thus the law makes plain the meaning of the contract and shows that it was not a conveyance passing title. In other words, the grant must be presumed to have been made in pursuance of the law and to be limited by the terms of the law. Indeed, it is doubtful whether a grant made in excess of the authority given by the law would be valid. This grant, in terms, refers to the law under which it was made and shows that it was made in pursuance of the authority conferred by that law, which provides that the Government will select a tract of land upon which the empresario may establish a colony, and that if

he does he will be paid in land at a fixed rate, and that the colonists that he introduces will also receive definite amounts of land. This grant, made thus in pursuance of this law, means just what the law says it may mean, and was simply a designation of a tract within which the petitioners might establish a colony.

It of itself passed title to no portion of the land to them.

In Spencer *v.* Lapsley, 20 How., 270, the Supreme Court used this language in respect to the law under which this grant was made:

"The contract of an empresario obliged him to introduce colonists into a specific district. The colonists having a family was entitled to one league of land of a particular quality, for which he paid a small sum to the Government. The empresario was paid five leagues and five labors for every one hundred families introduced. Of course the excess of land within the limits of the colony after supplying the colonists and the empresario remained to the Government.

59 The commissioner of distribution was an office- of the government who superintended the fulfillment of the contract by the empresario. He ascertained the character of the colonists, allotted to them and the empresario their shares of land, and for that purpose appointed surveyors, received returns of surveys, and executed the final titles."

Further strengthening this view of the meaning of the grant is article four of the instructions, quoted *supra*, which provides that the commissioners shall issue the titles for land, and this simply carries out the idea running through the law that no title passed to any of the land until the establishment of the colony.

But, further, the law which we have been considering was the law of the State of Coahuila and Texas, which was passed in pursuance of a decree of the Mexican Government of August, 1824, which will be found in Rockwell's Spanish and Mexican Law, page 451. In that general decree of the nation by the 12th article it is provided that no one person shall be allowed to retain the ownership of more than eleven leagues square. Obviously one of the States acting in pursuance of that decree would not have provided for a larger grant.

From these various considerations it seems to me clear that the grant in controversy was not intended to be and was not a conveyance subject to defeasance, but that it amounted only to a designation and setting apart of the tract as a tract within which the petitioners could establish a colony in conformity to the colonization law and upon such establishment obtain title to a fixed quantum of land within the tract. As there is no pretence that one was ever established, no title to anything ever passed. It follows that the complainant holds nothing by virtue of this so-called grant and the demurrer must be sustained, and it is so ordered.

60 (Indorsed:) 2365. Circuit court U. S. The Inter-State Land Company *vs.* The Maxwell Land Grant Co. and The Maxwell Land Grant Co. *vs.* Vincente Preteca *et al.* Opinion on

demurrers to bill. Filed Dec. 20, 1889. William A. Willard, clerk.

And afterwards and on, to wit, the 20th day of December, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1889, of said court—present, the Honorable David J. Brewer, circuit judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to Bill Sustained.

THE INTER-STATE LAND COMPANY *vs.* THE MAXWELL LAND GRANT COMPANY.	In Chancery. Bill to Declare Void the Grant of Miranda and Beaubien and for Other Relief.

At this day comes the said complainant, by J. L. Jerome, Esq., its solicitor, and the said defendant, by C. E. Gast, Esq., its attorney, also comes.

And the demurrer to the bill of complaint having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court now here that the said bill of complaint and the matters and things therein alleged is not sufficient in law to be answered unto, and so the said demurrer is sustained.

And thereupon, on motion of the said complainant, it is ordered by the court that it have thirty days from this day, within which time to ask the court for order herein.

61 And afterwards and on, to wit, the 18th day of January, A. D. 1890, the same being one of the regular juridical days of the November term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Leave to Amend Bill.

THE INTER-STATE LAND COMPANY *vs.* THE MAXWELL LAND GRANT COMPANY.	In Chancery. Bill to Declare a Land Grant Void & for Other Relief.

At this day comes the said complainant, by J. L. Jerome, Esq., its solicitor, and on its motion it is ordered by the court that the said complainant have leave to amend its bill of complaint herein as it shall be advised.

And afterwards and on the same day, to wit, the 18th day of January, A. D. 1890, came again the said complainant, by J. L.

Jerome, Esq., its solicitor aforesaid, and filed in said court and in said cause its amendment to the bill of complaint heretofore filed herein.

And said amendment to the bill is in the words and figures as follows, to wit:

Amendment to Bill.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States.

INTER-STATE LAND COMPANY, Plaintiff,
vs.
THE MAXWELL LAND GRANT COMPANY, Defendant.

The said plaintiff, The Inter-State Land Company, by leave of court first had and obtained, for amendment to their original
62 complaint filed herein, to be inserted between the tenth and eleventh clauses thereof, further aver that the said Beales was placed in the actual possession of said land by the proper Mexican authorities, and that said government in sundry and divers ways during all the time that the said land was within the jurisdiction of Mexico by its official acts recognized that the fee in said lands passed by said grant to said Royuela and Beales, the last of which official acts consists of the following order made by the president of the Republic of Mexico, dated Mexico, July 12th, 1836, addressed to said Beales, as follows, to wit:

"His excellency the President *ad interim* has been advised of the judicious and circumspect course which you may have taken in employing your influence to allay the disturbances which have broken out and to sustain order and the obedience due to the general government and in correcting public opinion through the medium of the newspapers in the United States of the North, and his excellency, being satisfied with this and the like proceedings on your part, which are such as belong to a good citizen, has directed me to return you thanks, as an acknowledgment for the same, and to require that you will continue in the most effectual manner in your power your good offices in defense of the just cause of the nation and to maintain and impress a spirit of order and peace upon the inhabitants of the colonial district placed under your charge, and also upon all other persons who may be interested in the benefits which will ensue from a like course of conduct. In consideration of which services, afforded to this nation in its present struggle, an order has been issued by this department, at the instance of the general-in-chief, to the army of operation to afford protection to the colonial establishments of yourself and Senor Edgerton, who has concurred in the course of proceedings which you have taken; and his
63 excellency co-operates in the recommendation in his favor as well as yours, in the manner indicated by this communication."

And the plaintiff further avers that the said Mexican Government, in pursuance of said order, did at all times maintain and protest the possession and title of the said Royuela and Beales to the said lands, and continued so to do until the successful revolution of Texas (one of the grantors) rendered it utterly impossible to afford further protection.

And the plaintiff further avers and alleges that, in addition to having taken actual possession of the lands embraced in said grant and having sectionized a large part thereof, the said Beales, in further performance of the condition of said grant, had introduced a portion of the families, as required by its terms, and would have introduced all the families of the class described therein and would have performed all the conditions of the said grant had he not been wholly prevented in such performance by the said revolution of Texas, which resulted in its independence of Mexican authority.

ALEXANER GRAVES,
JOHN L. JEROME,
Solicitors for Complainant.

(Endorsed:) No. 2365. Inter-State Land Company *vs.* The Maxwell Land Grant Company. Amendment to complaint. Filed Jan. 18, 1890. William A. Willard, clerk. John L. Jerome.

And afterwards and on, to wit, the 27th day of January, A. D. 1890, came again the said defendant, The Maxwell Land Grant Company, by its solicitor aforesaid, and filed in said court and in said cause its demurrer to the bill as amended, heretofore filed herein.

And th- said demurrer to the bill as amended is in words and figures as follows, to wit:

64 *Demurrer to Bill as Amended.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States.

INTER-STATE LAND COMPANY, Plaintiff,
vs.
THE MAXWELL LAND GRANT COMPANY, Defendant.

The demurrer of the Maxwell Land Grant Company to the bill of complaint as amended of Inter-State Land Company, complainant.

This defendant, by protestation, not confessing or acknowledging any of the matters and things in the said bill of complaint as amended to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth that the said complainant hath not by its said bill as amended made such a case as entitles it in a

court of equity to any relief from or against this defendant touching the matters contained in the said bill as amended or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint as amended this defendant doth demur to the said bill and to all the matters and things therein contained and humbly prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, and it prays to be hence dismissed with its reasonable costs in this behalf sustained.

I certify that in my opinion the foregoing demurrer of The Maxwell Land Grant Company, defendant, to the bill of complaint as amended of Inter-State Land Company, complainant, is well founded in law and proper to be filed in the above cause.

CHAS. E. GAST.
THE MAXWELL LAND GRANT CO.,
By CHAS. E. GAST, *Solicitor.*
FRANK SPRINGER, *Counsel.*

65 Endorsed: No. 2365. In the circuit court of the United States, district of Colorado. Inter-State Land Company *vs.* The Maxwell Land Grant Company. Demurrer of defendant to bill of complaint as amended. Filed Jan. 27, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 21st day of June, A. D. 1890, the same being one of the regular juridical days of the May term, A. D. 1890, of said court—present, the Honorable Henry C. Caldwell, circuit judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to Bill as Amended Sustained, Appeal Allowed.

THE INTER-STATE LAND COMPANY *vs.* THE MAXWELL LAND GRANT COMPANY.	In Chancery. Bill to Declare a Land Grant Void & for Other Relief.

Now comes the plaintiff, by Alexander Graves, Esq., and John L. Jerome, Esq., its solicitors, and the defendant, by Charles E. Gast, Esq., and Frank Springer, Esq., its solicitors, also come.

And this cause coming on to be heard upon the demurrer of the defendant to the amended bill of complaint herein, and being argued by counsel, and the court being now sufficiently advised in the premises, doth sustain said demurrer; and the complainant electing to abide by its bill of complaint, it is ordered, adjudged, and decreed that the bill of complaint herein be dismissed for want of equity, and that the defendant have and recover judgment for its costs, and that execution issue therefor.

And thereupon the complainant prays an appeal to the Supreme

Court of the United States, which is allowed upon condition that it file within sixty days its appeal bond in the sum of one thousand dollars, with sureties to be approved by the clerk and conditioned according to law.

66 And afterwards and on, to wit, the 1st day of July, A. D. 1890, came again the said complainant, by its solicitor aforesaid, and filed in said court and in said cause its bond on appeal to the Supreme Court of the United States; and the said bond is in words and figures as follows, to wit:

Bond on Appeal.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court.

THE INTER-STATE LAND COMPANY, Complainant,
vs.
THE MAXWELL LAND GRANT COMPANY, Defendant.

Know all men by these presents that we, The Inter-State Land Company, principal, and Frank Jerome and David V. Burns, sureties, are held and firmly bound unto the Maxwell Land Grant Company in the penal sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our successors, heirs, administrators, and assigns, firmly by these presents.

Witness our hands and seals on this the 26th day of June, A. D. 1890.

The condition of the above obligation is such that whereas the Maxwell Land Grant Company did, on the 21st day of June, A. D. 1890, before the Honorable Henry C. Caldwell, judge of the circuit court in and for said district of Colorado, recover a judgment in the above-entitled cause against the above bounden The Inter-State Land Company for costs of suit, from which an appeal has been prayed to the Supreme Court of the United States:

Now, if the said The Inter-State Land Company shall pay said judgment of costs and all costs, interests, and damages which may be awarded in case the said judgment shall be affirmed, and shall also prosecute said appeal with effect, then the above obliga-
67 tion to be void; otherwise to be and remain in full force and effect.

THE INTER-STATE LAND COMPANY,
By J. F. HADLEY, *Secretary.* [SEAL.]
FRANK JEROME. [SEAL.]
DAVID V. BURNS. [SEAL.]

STATE OF COLORADO, *County of Arapahoe,* } ss:

Frank Jerome and David V. Burns, being first duly sworn, depose and say, each for himself and not jointly, that he signed the fore-

going bond as one of the sureties thereto; that he is worth the sum of one thousand dollars in property not exempt from execution in the State of Colorado over and above all his just debts and liabilities.

FRANK JEROME.
DAVID V. BURNS.

Subscribed and sworn to before me this 28th day of June, A. D. 1890.

My commission expires July 22nd, 1890.

WARREN D. WOODMAN,
[NOTARIAL SEAL.] *Notary Public.*

Approved July 1st, 1890.

WILLIAM A. WILLARD, *Clerk.*

(Endorsed:) No. 2365. In U. S. circuit court. The Inter-State Land Co. *vs.* Maxwell Land Grant Co. Appeal bond. Approved and filed Jul- 1, 1890. William A. Willard, clerk. John L. Jerome.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and
68 entered of record in said court and in a certain cause lately in said court pending, wherein The Inter-State Land Company was complainant and The Maxwell Land Grant Company was defendant, as fully and completely as the same still remain on file or of record in my office.

Seal United States Circuit Court, District of Colorado. In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 28th day of July, A. D. 1890.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Endorsed on cover: Colorado C. C. U. S. No. 1267. The Inter-State Land Company, appellant, *vs.* The Maxwell Land Grant Company. Filed September 4, 1890.

Case No. 1267.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

MOTION TO ADVANCE,

—WITH—

REASON FOR THE APPLICATION.

KANSAS CITY, MO.:
PANTAGRAPH JOB OFFICE, SHERIDLEY BUILDING, NINTH AND MAIN.
1890.

going bond as one of the sureties thereto; that he is worth the sum of one thousand dollars in property not exempt from execution in the State of Colorado over and above all his just debts and liabilities.

FRANK JEROME.
DAVID V. BURNS.

Subscribed and sworn to before me this 28th day of June, A. D. 1890.

My commission expires July 22nd, 1890.

WARREN D. WOODMAN,
Notary Public.

[NOTARIAL SEAL.]

Approved July 1st, 1890.

WILLIAM A. WILLARD, *Clerk.*

(Endorsed:) No. 2365. In U. S. circuit court. The Inter-State Land Co. *vs.* Maxwell Land Grant Co. Appeal bond. Approved and filed Jul- 1, 1890. William A. Willard, clerk. John L. Jerome.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and
68 entered of record in said court and in a certain cause lately in said court pending, wherein The Inter-State Land Company was complainant and The Maxwell Land Grant Company was defendant, as fully and completely as the same still remain on file or of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 28th day of July, A. D. 1890.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Endorsed on cover: Colorado C. C. U. S. No. 1267. The Inter-State Land Company, appellant, *vs.* The Maxwell Land Grant Company. Filed September 4, 1890.

Case No. 1267.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

MOTION TO ADVANCE,

—WITH—

REASON FOR THE APPLICATION.

KANSAS CITY, MO.:
PANTAGRAPH JOB OFFICE, SHEIDLEY BUILDING, NINTH AND MAIN.
1890.

Case No. 1267.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

Now at this day comes the appellant, after due service of notice of this application, together with a copy of the notice, and requests this Honorable Court to advance on the docket the above entitled cause, so that the same may have an early hearing.

The reasons upon which this motion is based are as follows, to-wit:

I.

This suit involves a construction of the Treaty of Peace signed at Guadalupe Hidalgo on the 2nd day of February, 1848, between the Governments of the United States and Mexico.

Case No. 1267.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

Now at this day comes the appellant, after due service of notice of this application, together with a copy of the notice, and requests this Honorable Court to advance on the docket the above entitled cause, so that the same may have an early hearing.

The reasons upon which this motion is based are as follows, to-wit:

I.

This suit involves a construction of the Treaty of Peace signed at Guadalupe Hidalgo on the 2nd day of February, 1848, between the Governments of the United States and Mexico.

II.

It also involves lands embraced in the Texas Cession of Territory to the General Government of date November 25th, 1850.

III.

It also involves the title to the present Unorganized Territory, being a part of the Texas Cession.

IV.

Besides the constitutional points and construction of Treaty involved in this suit the United States is claiming a large portion of the lands involved herein as part of the public domain, and issuing Patents for the same.

V.

The suit involves settlements and sales in which a vast number of the citizens of the United States and foreigners are concerned.

Respectfully submitted.

Alexander Evans &
John L. Jerome
of Counsel

Thos. Bowen
Wirt Davis ~~Atty's~~ *for Appellant.*

To The Maxwell Land Grant Company, respondent in the above entitled cause, No. 1267, or C. E. Gast, Esq., the attorney of record for the said The Maxwell Land Grant Company, you are hereby notified that the said The Inter-State Land Company will on the 22 day of Dec., 1890, file in the said Court the foregoing application and on that day will request the said Court to hear the same according to its convenience.

Alexander Graves &
John L. Jerome
of Counsel
Wm Warner
Solicitor ~~Attys~~. *for Appellant, The Inter-State Land Co.*

Office Supreme Court U. S.
FILED,
FEB 20 1891
JAMES H. McKENNEY
CLERK

Case No. 1267.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

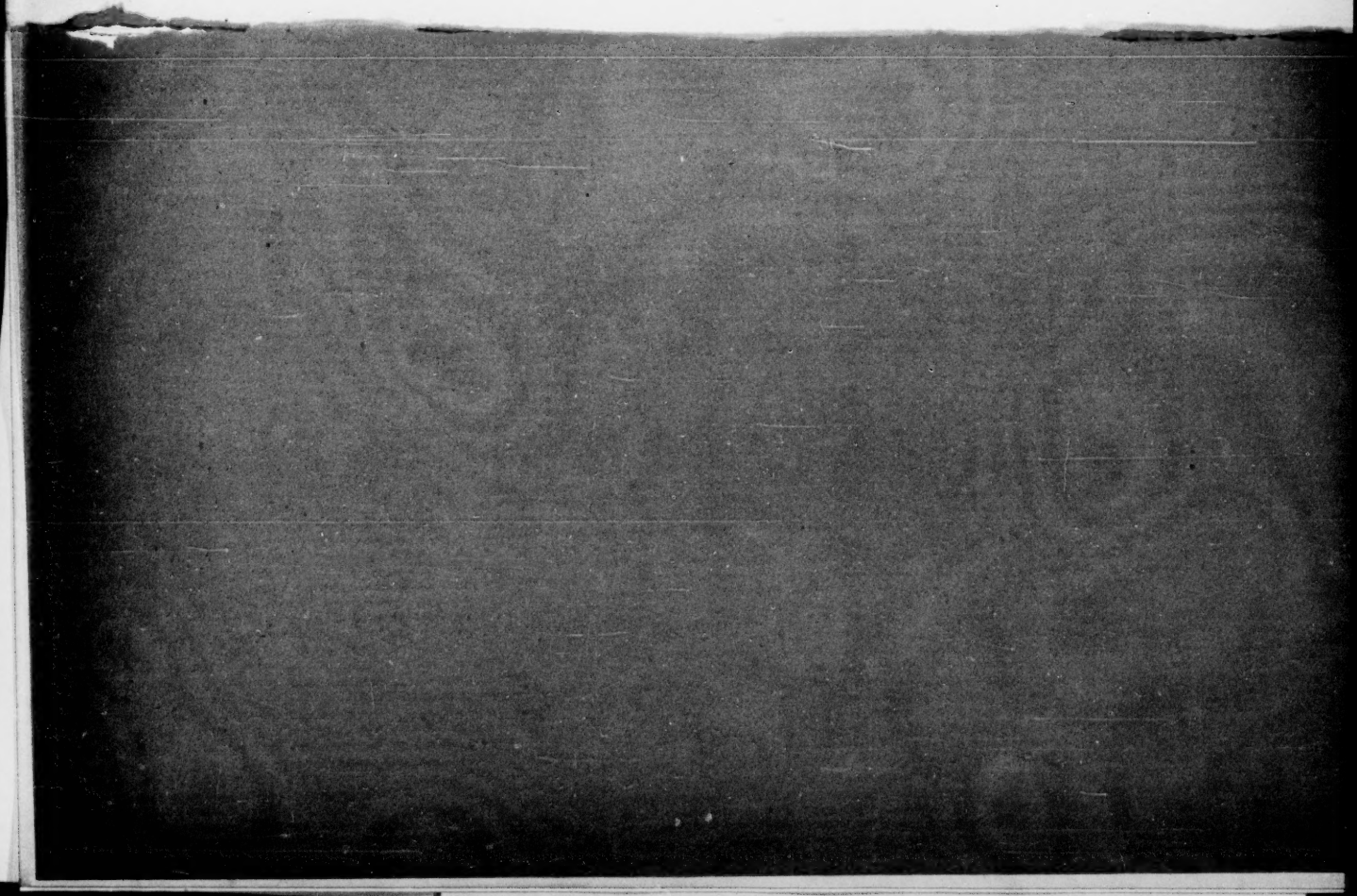
vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

Statement, Brief and Argument for Appellant.

WILLIAM WARNER,
JOHN L. JEROME,
ALEXANDER GRAVES,
Attorneys for Appellant.

KANSAS CITY, MO.:
PANTAGRAPH JOB OFFICE, SHEIDLEY BUILDING, NINTH AND MAIN.
1891.



Case No. 1267.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

STATEMENT OF CASE BY APPELLANT.

This is an appeal from the judgment of the Circuit Court for Colorado, involving title to certain lands in Las Animas County. A demurrer was sustained to appellant's amended bill in chancery and the bill dismissed for want of equity. The amended bill is not assailed as being in any respect informal or inartificial, pp. 51–52, printed record. The case is here properly on appeal, all the necessary steps having been taken for that purpose.

Appellant refused to further amend said bill and electing to abide by the same, appealed from the judgment sustaining said demurrer and dismissing said bill.

The bill sets forth the fact that both parties are incorporated and empowered to buy, own and sell real estate in Colorado. Also that on the 8th of January, 1841, Gaudalupe Miranda and Charles Beaubien, citizens of the Republic of Mexico, petitioned Armijo, the Governor of New Mexico, for a grant of lands, and that said grant was made by said Governor on the 18th day of April, 1844, to said petitioners and embraced the lands involved in this suit, being situate in Colorado.

Also that the Congress of the United States, by act approved June 1st, 1860, confirmed said grant, providing that said "confirmation shall be "construed as a quit-claim or relinquishment on "the part of the United States, and shall not affect "the adverse rights of any person or persons what-"sover."

Also that upon the 19th day of May, 1879, a patent for said lands was issued to said Beaubien and Miranda in pursuance of said act of confirmation, and that said patent also contained the following provision, to-wit: "But with the stipulation "that in virtue of the provisions of the 4th section "of the said act of June twenty-first, A. D. one "thousand eight hundred and sixty, this patent "shall only be construed as a quit-claim or relin-"quishment on the part of the United States, and "shall not affect the adverse rights of any person "or persons whomsoever."

Also that by sundry mesne conveyances (setting them forth), the respondent became the owner

of whatever claim Miranda and Beaubien as EMPRESARIOS by an alleged grant made by Armijo as Governor of New Mexico on 18th of April, 1844, had to the lands involved, and by virtue thereof said respondent is asserting title thereto. The bill also charges that on the 4th day of April, 1837, the General Congress of Mexico, by proper act, repealed all EMPRESARIO laws and regulations for making grants of lands and that said Armijo, as Governor of New Mexico, had no power or authority to make said grant to Beaubien and Miranda. That on the 12th day of April, 1837, the Supreme Government of Mexico, passed an imperial decree to carry out the provisions of said act of April 4th, 1837, said act and decree being pleaded *ipsissimis verbis* in the bill.

The bill also charged that at no time did said Armijo have power or jurisdiction to make said grant. The bill also sets forth that on the 13th day of March, 1832, at Saltillo, the capital of Coahuila–Texas, a state in the Republic of Mexico, Jose Manuel Royuela and John Charles Beales, in due form of law petitioned Jose Maria de Letona, the Governor of Coahuila–Texas, to make them an EMPRESARIO grant of certain lands (embracing the lands involved in this suit), and that he on the 14th day of March, 1832, in due form of law, accepted said petition and made to said Royuela and Beales such EMPRESARIO grant of said lands, and that the same was duly attested by Santiago del Valle, Secretary of the State of Coahuila–Texas, and was archived on said date in said Secretary's office. Correct translations of both grants are filed with the bill as exhibits Nos. 2, 3. The bill sets forth the power and authority of the Governor of Coahuila–Texas to make this grant and that thereby the title in fee to the lands involved in this suit passed to

said Royuela and Beales and that they were placed in the actual possession thereof, and that the Mexican Government and its authorities at all times by official acts recognized that the grant (subject to a condition of defeasance subsequent) passed the title in fee to Royuela and Beales, and at all times maintained and protected their possession and title, until the same became impossible by reason of the successful revolution of Texas and its separation from Mexico. That Royuela and Beales sectionized a large portion of the lands embraced in said grant and in the performance of the condition subsequent contained therein they had introduced a portion of the families loyal to the Republic of Mexico, and would have introduced the total number of such loyal families required by said condition, but for the fact that they were wholly prevented therefrom by the revolution of Texas, one of the grantors, which resulted in its independence of Mexican authority, thereby rendering such performance impossible.

The bill sets forth an unbroken chain of title from Royuela and Beales to the appellant, by mesne conveyances, and that by virtue thereof the appellant became the owner of the lands involved in this suit, and that the appellant is now (and at the institution of this suit was) in the absolute possession of said lands, by tenants, and that the respondent has never had possession of any of the lands herein involved.

The bill sets forth that these lands are worth $200,000. The bill sets forth that the respondent by virtue of the alleged grant to Miranda and Beaubien, the act of confirmation and patent aforesaid, and mesne conveyances, is asserting ownership of said lands and that in assertion

of such ownership, the respondent is now prosecuting a suit in equity in said Circuit Court against appellant's tenants, charging them with having located on said lands and that in said last named suit the respondent claims to be the sole and exclusive owner of said lands, and that the title of appellant is subordinate and inferior to the title claimed by said respondent, and that in said suit the respondent charges that the occupancy of said lands by appellant's tenants is illegal and wrongful and said tenants' acts of depasturing said lands are wrongful and constitute trespasses, and that in said suit the respondent is seeking a writ of injunction to restrain said acts of occupation and depasturing by said tenants, and that by order of Court they be removed therefrom and their right and title be declared inferior and subordinate to the alleged claim of respondent. The bill also charges that the respondent is in addition thereto prosecuting several actions of ejectment against appellant's tenants to oust them from possession and enjoyment of said lands, said equity suit and actions of ejectment being charged in appellant's bill as now pending in said Circuit Court and based upon the said alleged grant to Miranda and Beaubien, act of confirmation, patent and mesne conveyances, whereby a cloud is cast upon appellant's title to the great damage of appellant.

The said bill also charges that the respondent is threatening other actions of ejectment against other of the appellant's tenants upon the lands involved in this suit, situate in said Las Animas County, Colorado, and is about to take actual possession of other vacant lands of the appellant in said County, all of which lands are specifically described in said bill and are owned by appellant

by virtue of said grant to Royuela and Beales and mense conveyances.

The said bill charges that thereby a multitude of suits in equity and actions at law will be inevitable and appellant's title beclouded.

The prayer of said bill is as follows, to-wit: "And forasmuch as your orator is remediless in "the premises by the strict rules of the common "law, and is relievable only in a Court of Equity, "where matters of this nature are properly cogni- "zable and relievable; and forasmuch as by this "means only can a multiplicity of actions at law "be prevented, all depending upon the same right "and involving the same question; and for as "much as the said actions and doings of the defend- "ant work great and irremediable damage to your "orator; therefore your orator prays that as to it, "The Inter-State Land Company, the said alleged "title and claim of title of the Maxwell Land "Grant Company, may by the proper order and "decree of this honorable Court be for naught held "and esteemed, and that so far as the same affects "the lands involved in this suit the said alleged "grant to Beaubien and Miranda, said act of con- "firmation and patent, and all the mesne convey- "ances aforesaid from which the said defendant, "the Maxwell Land Grant Company, deduces and "asserts its claim to the lands involved in this suit "may, as to your orator, be declared void for any "and all purposes whatsoever: and that the said "defendant, the Maxwell Land Grant Company, "and each and every person claiming by, through, "or under it may be forever enjoined from "asserting any title to or any interest in any "of the lands; and that the Maxwell Land "Grant Company may be perpetually enjoined

" from the further prosecution of the said suit
" in equity and actions of ejectment against
" your orator's said tenants, and from attempting to
" lease, convey, occupy any of the said lands or any
" part thereof, and that your orator may be decreed
" to have the legal title to the premises, herein-
" before described, and for such other and further
" relief as the nature of this case may require and
" to this honorable Court may seem meet. May it
" please your honors to grant unto your orator a
" writ of subpœna, etc.

BRIEF.

I.

The allegations of the bill state a clear case for equitable relief, and the demurrer, confessing the same, should have been overruled.

II.

The grant to Miranda and Beaubien (from which the respondent derraigns title) was void, because the petition for the same was presented January 8th, 1841, and Armijo, Governor of New Mexico, had no power to make the grant to them on the 18th day of April, 1844.

The EMPRESARIRO law and all its regulations had long prior to said dates been repealed by act of the General Mexican Congress of date April 4th, 1837, and the Imperial Decree, made in pursuance thereof, on the 12th day of April, 1837.

Rockwell's Spanish and Mexican laws, pp. 627–628.

Hall's Mexican Digest, p. 115.

III.

The above act of repealer and the Imperial Decree thereunder, rendered the said grant by Armijo absolutely null and void, because this Court in the United States vs. Vigil, 13 Wall, 450–451, *held* :

"It has been repeatedly decided by this Court "that the only laws in force in the territories of

"Mexico for the disposition of the public lands, "with the exception of those relating to missions "and towns, is the act of the Mexican Congress of "1824, and the regulations of 1828." The same doctrine is recognized in

Fremont v. *United States*, 17 How., 542.
United States v. *Cambuston*, 20 How., 59.
United States v. *Workman*, 1 Wall., 745.
United States v. *Jones*, 1 Wall., 766.
United States v. *Hartnell*, 22 How., 286.
United States v. *D'Aguirre*, 1 Wall., 311.
United States v. *Pico*, 5 Wall., 536.
Colorado County v. *Commissioners*, 95 U. S., 259.
United States v. *Valejo*, 1 Black, 541.
Hornsby v. *United States*, 10 Wall, 224.

IV.

The act of the United States Congress purporting to confirm to Miranda and Beaubien this *void* grant and the patent issued thereunder, both contained a provision that the same should be construed as a quit-claim on the part of the United States, and that said act and patent should not be in derogation of the adverse claims of any person whomsoever.

It is clear from the language of the act and patent that they furnish no muniment of title as against the title made to Royuela and Beales. This Court in *Adams* v. *Norris*, 103 U. S., 593, *held:*

"The United States, in dealing with parties "claiming under Mexican grants, land within the "territory ceded by the treaty with Mexico, *never "made pretense that it was the owner of them.* This "principle has been more than once clearly "announced in this Court. The leading cases are:

Beard v. *Federy*, 3 Wall., 478.
Henshaw v. *Bissell.*, 18 Wall, 255.
Miller v. *Dale*, 92 U. S., 473."

V.

Therefore the grant being originally void by reason of being made contrary to Mexican law, and this Court having held that in a contest between rival grantees of the same land, the act of confirmation and patent amounts to a single declaration that the United States never made any pretense of owership thereto, the appellant will now proceed to point out the law by which it claims that its title is superior to that claimed by respondent as follows, to-wit:

VI.

The bill shows that Royuela and Beales were placed in actual possession of said land, sectionizing a large part, introducing a portion of the families required by the conditions of said grant to them, and that they would have wholly complied with said conditions, but were prevented therefrom by the

revolution and subsequent independence achieved by Texas (one of the grantors), whereby the condition was not only rendered impossible, but illegal. Also that the Mexican Government and authorities recognized that the fee passed by this grant to Royuela and Beales, and that by virtue of mense conveyances, appellant became the owner thereof and have possession of the lands involved in this suit and that respondents have never had possession thereof. This the demurrer admits.

A.

"*The date of the concession for lands constitutes* "*an inviolable law for the right of property and legal* "*ownership.*"

Hall's digest of Mexican Law, p. 106, §277.

The date of the grant to Royuela and Beales is March 14th, 1832, and the concluding language therein contained is that the Secretary has been "directed to give the EMPRESARIOS this certified copy "of all the documents relating to the grant that "they may serve them as security and as a formal "title, or title in due form, thereto, the originals "will, according to law, remain filed and recorded "in the Secretary's office under my charge."

The EMPRESARIO law and the regulations were in full force at this date.

"This Court said, the record was the grant and "without it the title was not divested. *The Gov-*

"*ernor was required to give a document to the party* "*interested which was evidence of title and enabled him* "*to get possession.*"

Peralta v. *United States*, 3 Wall., 440.

In *De Harro* v. *United States*, 5 Wall., 599, this Court construed the Spanish word "*titulo*" to mean the *instrument which conveys title in fee in the usual acceptation of the term.*

Hall's digest of Mexican Law, §511, p. 151, provides, "The definitive grant asked for being made, "a document signed by the Governor shall be given, "*to serve as a title* to the interested party, wherein "it must be stated that the said grant is made in "exact conformity with the provisions of the law, "in virtue whereof possession shall be given."

This is the EMPRESARIO law and the grant herein exactly conforms. See Ex. No. 3, printed record, p. 24. Decree No. 16, of Coahuila–Texas, passed March 24th, 1825 (in force at date of this grant), provided by Art. 8, that the executive alone should pass upon an application for an EMPRESARIO grant. Art. 9, *id.* guaranteed the EMPRESARIO. Art. 27 *id.* authorized EMPRESARIOS to alienate their lands, but restrained other settlers from such alienation until they had completed the cultivation of their lands.

Paschal's Annotated Digest of the laws of Texas (4th Ed. July 31, 1866), p. 154, Art. 246, expressly recognizes this grant as valid.

Kennedy in his 1st Vol. of the History of Texas,

pages 182 to 196 inclusive, gives the field notes of Alexander Le Grande, the suveyor of Royuela and Beales, who surveyed and sectionized a large part of the grant and the map attached to the history shows the survey and locality of this grant.

Gonzales et al v. *Ross et al.*, 120 U. S., 626.

B.

Undoubtedly the presumption is in favor of the validity of this grant until the contrary is proved by those who controvert it.

"The whole burden of proof lies on him."

United States v. *Jenks*, 2 Pet., 225.
United States v. *Arredondo*, 6 Pet., 726.
United States v. *Peralta*, 19 How., 347.
Gonzales et al v. *Ross et al.*, 120 U. S. Rep., 605.
Houston v. *Perry*, 3 Texas, 394.
Byrnex v. *Fagan*, 16 Texas, 391, 398.
Larkin v. *U. S.*, 18 How., 562.
United States v. *Reading*, 18 How., 4, 8.
United States v. *Johnson*, 1 Wall., 329.

C.

The condition of settling the land embraced in this grant with the requisite number of Catholic families, loyal to Mexico and who were required to bear arms in defense of the authority of the Mexican Government, was a condition *subsequent*, upon

non-performance of which a forfeiture might be claimed alone by Mexico or Coahula–Texas, and until *inquest of office* by that Government, the title in fee passed to and vested in the grantee.

Gonzales et al v. *Ross et al.* 120 U. S., 625, 626.
Hanrick v. *McKenny*, 7 Texas, 384.
United States v. *Arredondo*, 6 Pet., 691 *et seq.*

This proceeding to declare a forfeiture of title for non-performance of this condition annexed to the grant is specifically provided for and proves that the condition is *subsequent.* "Art. 11 of Decree "No. 128 of Coahuila–Texas, passed April 1st, 1830 "(in force at date of this grant), provides that 'The "executive shall cause the contracts that are not "carried into effect, in the time stipulated, to be "published that the respective lands may be under- "stood to have again become vacant and open to "colonization.'"

And section 1138 p. 326, Hall's Digest of Mexican law, provides, "These denouncements will be "made before the departmental Government "directly, or through the medium of the respect- "ive employees in each state." See also

Gonzales et al v. *Ross et al*, 120 U. S., 625–626.

And this denouncement, or inquest of office, could not be had by any other than the Mexican

Government or that of Coahuila-Texas, or the State of Texas after the revolution.

Gonzales et al v. *Ross et al, supra*, p. 625, 626.
Aihart v. *Massaiu,* 98 U. S., 491–493.

D.

Had the land involved herein remained subject to Mexican jurisdiction, the grantees would have had full six years from the date of the grant to perform the condition thereof, respecting the introduction of the specified number of Catholic families who should be loyal to Mexico and take up arms in defense of the Mexican Government.

Prior to the 14th day of March, 1838, neither the Mexican Government, nor that of Coahuila-Texas, could have reclaimed the land from the grantees for failure to perform this condition, and then only after inquest of office as set forth in subdivision **"C"** *supra.*

But on Nov. 13, A. D. 1835, Texas (one of the contracting parties to this grant), declared its separation from and independence of Mexico, and adopted its first constitution. By Art. XIV thereof Texas ordered a cessation in the performance of all conditions annexed to EMPRESARIO grants, without any complaint against EMPRESARIOS or denouncement of the land. The only reason given in said Art. being the unsettled state of the country.

Paschal's Dig., *supra*, p. 27.

War was now flagrant between Texas and Mexico. On April 22, 1836, Mexico acknowledged the independence of Texas.

Thus by the voluntary act of Texas the condition of this grant became both illegal and impossible.

By section 2481, Hall's Dig. Mexican Law, it is provided: "*The condition will be held as fulfilled* "*which fails to be realized by the voluntary act of the* "*obligated party.*"

In *United States* v. *Arredondo*, 6 Pet. p. 745, this Court declared, when referring to the failure of settling 200 families in pursuance of the condition annexed to the grant, "*It is an acknowledged rule of* "*law that if a grant is made on a condition subse-* "*quent and its performance becomes impossible by the* "*act of the grantor, the grant becomes single.*"

In *United States* v. *Vaca*, 18 How., 556, this Court expressly held, that the failure to perform conditions in Mexican land grants, had no tendency to work a forfeiture of the title.

In *United States* v. *Noe*, 23 How., 312 (affirming *United States* v. *Kingsbury*, 12 Pet., 476) *held*:

"The Court will liberally construe the per-
"formance of conditions, precedent or subsequent,
"in such grants. It has not nor will it apply in
"the construction of such conditions in such cases
"the rules of the common law."

The respondent can not claim the benefit of any *forfeiture* in this case.

Gonzales et al v. *Ross et al*, 120 U. S., 625.

Texas having by its *voluntary* act prevented the performance of the condition annexed to the grant is bound by the grant, discharged of the condition, and so is the United States, which incorporated Texas into the Union, March 1, 1845, and by proper act of date Nov. 25, 1850, accepted the "Texas Cession," which embraced the land involved herein.

The language of this Court in Arredondo's case, 6 Pet., 745, 746, is entirely applicable wherein it says: "We are not prepared to say that the con-"dition of settling two hundred Spanish families in "an American territory has been or is possible. " * * * To exact its performance after its " * * cession would be * * "enforcing a forfeiture on principles which if not "forbidden by the common law, would be utterly "inconsistent with its spirit. * * If the "case required it, we might feel ourselves at all "events justified, if not compelled to declare that "the performance of this condition had become "impossible by the acts of the grantor, the trans-"fer of the territory, the change of Government, "manners, habits, customs, laws, religion, and all "the social and political relations of society and "life."

E.

The treaty of Guadalupe-Hidalgo protects this grant. The protocol provides for having legitimate titles under Mexican Law to property held by grants "in Texas up to the 2d of March, 1836, to be "acknowledged before the American tribunals."

In *United States* v. *Aguisola*, 1 Wall., 352, this Court declares its purpose to enforce all claims that would have been *held good by the Mexican Government at the date of the treaty.*

In *U. S. Freehold Co.* v. *Tameling*, 93 U.S. 66, this Court said: "They were entitled to protec- "tion whether the party had the full and absolute "ownership of the land or *merely an equitable* inter- "est therein which required some further act of the "Government to vest in him a perfect title."

But the Government has taken no such act regarding the lands involved herein.

F.

The extent of this grant can not affect the validity thereof, nor can the Court be governed by that consideration in construing its tenor and effect as to the condition of settling families thereon.

In *United States* v. *Maxwell Land Grant Company*, 121 U. S., 325 *et seq.*, this Court held that the eleven league clause contained in the Mexican Law had no application and that the term "out boundaries" was inappropriate as

applied to EMPRESARIO grants. It was also there held that where the grant was by specific boundaries the donee was entitled to the entire tract described.

In *United States* v. *Sutherland*, 19 How., 363, it is said : "The United States is bound by treaty "with Mexico to protect all *bona fide* titles previ- "ously granted by Mexico, and this Court has no dis- "cretion to enlarge or curtail such grants to suit "its own sense of propriety nor defeat just claims, "HOWEVER EXTENSIVE, by stringent rules of con- "struction, to which they were not originally sub- "jected."

In *United States* v. *Arredondo*, 6 Pet., p. 746, the Court held the same doctrine and said, "that "the intendant had the power to make the grant, "the terms and *extent* of which were within his dis- "cretion, of the proper exercise of which THIS "COURT HAS NEITHER THE POWER NOR RIGHT TO "JUDGE."

In *United States* v. *Moreno*, 1 Wall, 400, this Court decided as follows :

"A right valid before the cession was equally "valid afterwards. *It is the Court's duty to see that* "*no rightful claim is rejected. No nation can have any* "*interest higher than the right administration of* "*justice.*"

ARGUMENT.

The amended bill of The Inter-State Land Company to which this demurrer is interposed, sets forth:

1. The fact of Appellant's incorporation.

2. The fact of Respondent's incorporation.

3. The alleged claim of title to the lands involved as made by Respondent.

4. The locality.

5. The Congressional act confirmatory.

6, 7, and 8. The mesne conveyances and decrees of Court whereby defendant claims to have procured the title which Beaubien and Miranda had by virtue of the grant from Armijo.

9. That the alleged grant by Armijo to Beaubien and Miranda was made without any authority of law, because prior to its execution, to-wit: On the 4th day of April, 1837, the Mexican Constituent Congress repealed by its proper act all existing laws and regulations authorizing such grants.

Also the Imperial decree made on the 12th of April, 1837, in pursuance of said act of the Mexican Congress which is fully set forth in exhibit No. 4, filed with said bill.

10, 11, 12 and 13. The EMPRESAIRO Grant to

Beales and Royuela to the lands involved in this suit setting forth with precision the tenor and effect of said Grant, and the further fact that the Mexican Government in such cases, and especially in this instance, by sundry and divers official acts recognized that Beales and Royuela by virtue of their Grant had the title in fee to the premises. Also setting forth the mesne conveyances whereby The Inter-State Land Company derives title to the said premises.

Also setting forth the fact that The Inter-State Land Company is in the exclusive possession of said premises.

Also setting forth the fact that the Maxwell Land Grant Company has never had possession of any part of said premises.

14. The fact of the multitude of lawsuits and other grievous acts of the Defendant, including the cloud on our title, whereby we invoke the Court's interposition. All these facts are admitted by the demurrer, and it only remains for this Court to consider the law applicable to these admitted facts, in order to settle the controversy between plaintiff and defendant.

To proceed directly, therefore, the chief question in this case may be stated to be, whether prior to and at the date of the alleged grant by Armjio to Beaubien and Miranda, which is the matrix of the Maxwell title, the EMPRESARIO laws of Mexico had been repealed. If so, the result follows of neces-

sity that the act of Armijo in making the alleged grant was in excess of authority, and passed no interest or title to the lands involved in these suits. We will attempt first to establish the affirmative of this proposition and then to cite authorities by way of express adjudications of this Court whereby, we will contend, that the judgment of the Court upon this demurrer must be against the Maxwell Land Grant Company.

It will be observed that the date of the alleged grant by Armijo to Beaubien and Miranda is April 18th, 1844; but by reference to page 627 of Rockwell's Spanish and Mexican Laws, and page 115 Hall's Mexican Digest, we find that on the 4th day of April the General Congress of Mexico enacted as follows:

LAW.

MEXICO, 4th April, 1837.

"Providing for rendering effective the colonization of the lands which are or should be the property of the Republic. All directions heretofore issued in relation to colonization, so far as they are contrary to this law are repealed. See decree of the Supreme Government of the 12th of the present month. The Government, with the consent of the Council, will proceed to give effect to the colonization of the lands which are or should be the property of the Republic, by means of sale, ENFITEUSIS, or mortgage, applying the amount, which for the best land should not be less than ten reals per acre, to the redemption of the national debt contracted or to be contracted, reserving always a sufficient amount in order to fulfil the promise to the troops who aided in achieving the

"independence, and for the rewards and grants
" decreed by Congress in favor of the native tribes
"or nations and of those aiding in the restoration
"of Texas. and being not hindered by the laws
" heretofore passed in relation to the colonization,
"the provisions of which, so far as they are con-
" trary to this law, are repealed, the prohibition of
"the eleventh article of the law of the 6th April,
"1830, being renewed."

And immediately following the adoption of this law, and on the 12th day of April, 1837, the Government of Mexico, by virtue of this repealer of the 4th April, 1837, adopted an entirely new land system specially for the departments of Texas, Chihuahua, New Mexico and Sonora, whereby Lizardy & Company of London were appointed agents to sell the vacant lands in these departments by means of land scrip. This decree will be found upon pages 627-630 inclusive, Rockwell's Spanish and Mexican Laws. The plain letter of this law and the evident spirit thereof effect the repeal of all regulations and colonization laws previously in force. This would seem to be so clear that an argument of the proposition would needlessly consume the time of the Court. The repealer is something more than that which arises from the repugnancy of the prior colonization laws, and the regulations thereunder. It is a clear and explicit declaration of the Sovereign Constituent Mexican Congress that the EMPRESARIO laws and regulations thereunder are repealed; and this intent is made more manifest, if need be, in the imperial decree of the 12th day of April, 1837, which is set forth

IPSISSIMIS VERBIS in the amended bill of The Inter-State Land Company. If this be correct, by what authority then did Armijo, the Governor of New Mexico, more than seven years thereafter, assume to make an EMPRESARIO grant to Beaubien and Miranda, from whom the Maxwell Company DERRAIGNS title. The conclusive answer to this is furnished by the decision of this Court in the case of the *United States* v. *Vigil*, 13 Wall., 450, 451, wherein the Court uses the following language in the very first few lines of its decision, namely:

"It has been repeatedly decided by this Court "that the only laws in force in the territories of "Mexico for the disposition of the public lands, "with the exception of those relating to missions "and towns, are the act of the Mexican Congress "of 1824, and the regulations of 1828."

The same is recognized in

Fremont v. *United States*, 17 How., 542.
United States v. *Cambuston*, 20 How., 59.
United States v. *Workman*, 1 Wall., 745.
United States v. *Jones*, 1 Wall., 766.
United States v. *Hartnell*, 22 How., 286.
United States v. *D'Aguirre*, 1 Wall., 311.
United States v. *Pico*, 5 Wall., 536.
Colorado County v. *Commissioners*, 95 U. S., 259.
United States v. *Valejo*, 1 Black, 541.
Hornsby v. *United States*, 10 Wall., 224.

So that this colonization law of 1824 and the regulations of 1828, being by the Mexican Congress on the 4th of April, 1837, and the Imperial Decree of the 12th of the same month repealed, the conclusion must of necessity result that in 1844 Armijo had no power to make the grant to Beaubien and Miranda, and the Maxwell Land Grant Company therefore cannot claim that grant as the source of their title.

But if it is contended in the next place that the act of Congress, approved June 1, 1860, confirming the grant of Armijo to Beaubien and Miranda, and the Government Patent issued thereunder constitute a sufficient muniment of title to the Maxwell Land Grant Company for the *purpose of this suit*, we respectfully maintain that such a position is wholly untenable, both in law and fact. For the purposes of this demurrer the allegations of the amended bill of The Inter-State Land Company are admitted to be true. These pleadings show that the Patent in question follows almost literally the language of the act of confirmation, approved June 1, 1860. That act of confirmation provides by its fourth section that the said "confirmation "shall only be construed as a quit-claim or relin- "quishment on the part of the United States, and "shall not affect the adverse rights of any person or "persons whomsoever."

The language of the Patent is that it was issued upon "the express stipulation that in virtue "of the fourth section of said act of June 1, A. D.

"1860, this Patent shall only be construed as a quit-
"claim or relinquishment on the part of the United
"States, and shall not affect the adverse rights of
"any person or persons whomsoever."

The language contained in both the Patent and confirmation clearly negatives the idea that the United States Government intended to make a grant DE NOVO so as to bind any other person claiming adversely to the grant by Armijo. If it were needful to cite authorities to fortify this decision, we confidently rely upon the construction which this Court has placed upon similar language in the act of confirmation and patent involved in the case of *Adams* v. *Norris*, 103 U. S. Sup. Ct. Rep., page 593, as wholly applicable and settling the proposition entirely against the demurrant herein. In that case the contest was between the grantees of the same land, both claiming under conflicting Mexican grants, the one grant having been confirmed and patent issued therefor by the United States Government just the same as the case now at bar. In that case this Court in passing directly upon this point, uses the following language:

"No doubt where the Patent is for land to
"which the government had an undisputed title the
"proposition is generally if not always true; but
"the United States, in dealing with parties claim-
"ing under Mexican grants, land within the terri-
"tory ceded by the treaty with Mexico, NEVER MADE
"PRETENSE THAT IT WAS THE OWNER OF THEM. When,
"therefore, guided by the action of the tribunals
"established to pass upon the validity of these

"alleged grants, the Government issued a Patent,
"IT WAS IN THE NATURE OF A QUIT-CLAIM—AN ADMIS-
"SION THAT THE RIGHTFUL OWNERSHIP HAD NEVER
"BEEN IN THE UNITED STATES, BUT PASSED AT THE
"TIME OF THE CESSION TO THE CLAIMANT OR THOSE
"UNDER WHOM HE CLAIMED. This principle has been
"more than once clearly announced in this Court."

The leading cases are:

Beard v. *Federy*, 3 Wall., 478.
Henshaw v. *Bissell*, 18 Wall., 255.
Miller v. *Dale*, 92 U. S., 473.

Therefore the doctrine is clearly and positively announced by decision of the highest tribunal in this country, which has jurisdiction to hear these causes involving Mexican land grants, that the act of confirmation and Patent, under which the Maxwell Land Grant Company claim that the EMPRESARIO grant to Beaubien and Miranda has been by act of our Government made good, is nothing more than "an admission that the rightful ownership "was never in the United States but that the Uni-"ted States in dealing with parties claiming under "Mexican grants lands within the territories ceded "by the treaty with Mexico never made pretense "that it was the owner of them."

If therefore the act of confirmation and the Patent, as between the parties to these suits, gave no title, as the case of *Adams* v. *Norris*, clearly declares, and if the EMPRESARIO laws and the regulations thereunder were repealed by the Mexican

Congress 4th April, 1837 (and this Court has said they were the only laws authorizing the grant to Beaubein and Miranda) then we submit that the legal conclusion follows beyond cavil that the Maxwell Land Grant Company has no title to these lands as against the Inter-State Land Company. Again, even if it were true (which we do not concede) that the EMPRESARIO law had not been repealed at the time when Armijo assumed to make the grant to Beaubien and Miranda, yet, nevertheless the grant to Royuela and Beales from which The Inter-State Land Company and its tenants derraign title was prior in time and therefore paramount in law to the one under which the Maxwell Land Grant Company claims.

This is a familiar principle of law concerning the priority of deeds and has often been applied by this Court to the cases of conflicting Mexican grants embracing the same lands. The Government of the United States has no interest in these lands involved in these suits because of the decision in *Adams* v. *Norris* and because of its Patent issued under the act of confirmation. The Mexican Goverment can have none. If it be true therefore that the grant to Beaubien and Miranda was void because the same was made after the repeal of the EMPRESARIO law, then where does the title to these lands reside? It is a most cherished maxim that the law abhors a vacuum; and no title to land is permitted to be *in nubibus*. Can there be the slightest doubt that the best and only title to these

lands is to be found in The Inter-State Land Company? We think not. Certainly if we are correct in what has been said, there can be no doubt but that this demurrer should be overruled, because, whatever may be our legal title to the lands involved in these suits, certain it is that the Maxwell Land Grant Company having neither title nor possession should not be permitted to disturb our possession which, as to them, is lawful and rightful, by the harassment of law-suits and the other acts and doings set forth in the pleadings and admitted by the demurrer.

But in the third place we cannot agree to rest the case upon the ground alone that we have the lawful possession of these lands. We submit that we have the only existing title thereto. The effect of the demurrer is an admission *pro hac vice* that The Inter-State Land Company has the title in fee to these lands; but inasmuch as the question is one of great importance to The Inter-State Land Company and its tenants, we will ask the indulgence of the Court while we make an analysis of the title claimed by The Inter-State Land Company. The Grant to Royuela and Beales is in due form of law, the original being duly archived among the archives of Mexico as admitted by the demurrer.

It will be observed, by reference to the copy of the grant by Maria de Latona to Royuela and Beales, filed as exhibits in this cause, that the last article thereof concludes with the following language:

"And having been directed to give the EMPRES-
"ARIOS this certified copy of all documents relating
"to the grant that they may serve them as *security*
"and as a formal title thereto, the originals will,
"according to law, remain filed and recorded in the
"Secretary's office under my charge."

Hence, in addition to the uncontroverted allegation in the pleading that the title passed to Royuela and Beales by virtue of the Grant, the very terms of the Grant provide that it shall serve them "as a formal title thereto." The Governor of Coahuila and Texas had the power to make this Grant, because the general Mexican colonization laws and regulations then in full force gave him that power; and the colonization law of Coahuila–Texas passed in pursuance thereof and in strict conformity to the national colonization laws on the 24th of March, 1825, by its Article 8, provides that the executive alone shall pass upon the application of the EMPRESARIO; and by Article 9, that the EMPRESARIO grants shall be "guaranteed by this law." Also Article 27 of the same law provides that the EMPRESARIOS may alienate the lands they hold, the successors being held to perform the CONDITIONS annexed to the grant, of which we speak more fully hereafter. The same law authorized "the other "settlers to alienate their lands when they have "completed the cultivation thereof, and not be-
"fore."

And in this connection we desire to call the attention of the Court to the fact that the lands involved were ceded to the United States by virtue of

the Texas cession in the year 1850, and that by act of Congress of date September 9th, 1850, whereby the United States obtained by the consent of the Legislature of the Republic of Texas the jurisdiction over the lands in question, the Government of the United States recognized the fact that the State of Texas, which had been one of the constituents of Coahuila-Texas, had the title to the property in question.

But apart from these references to the Mexican law and the act of Congress of September 9, 1850, our contention is that this Court has conclusively settled the point against the Respondent. In the case of the *United States* v. *Jenks*, 2 Pet., 225, this Court said:

"Undoubtedly the presumption is in favor of "the validity of every grant issued in the forms pre- "scribed by law, and it is incumbent upon him who "controverts it to support his objections. The "whole burden of proof lies on him."

And again this Court in the case of the *United States* v. *Arredondo*, 6 Pet., 726, said:

"The universal adoption of the rule is that the "acts of public officers in disposing of public lands "by color or claim of public authority are evidence "thereof until the contrary appears by the show- "ing of those who oppose the title under it, and "deny the power by which it is professed to be "granted. Without the recognition of this princi- "ple there would be no safety in title papers, and "no security for the enjoyment of property under "them. The grant is void unless the grantor has "the power to make it; but it is not void because "the grantee does not prove or produce it. The "law supplies this proof by legal presumption

"arising from a full, legal and complete execution "of the grant under all the solemnities known or "proved to exist or to be required by the laws of "the country where it is made and where the land "is situated."

Again, in the case of the *United States* v. *Peralta*, 19 How., 347, this Court said:

"We have frequently decided that the public "acts of public officers purporting to be exercised "in an official capacity and by public authority "shall not be presumed to be usurped, but that a "legitimate authority had been previously give nor "subsequently ratified. To adopt a contrary rule "would lead to infinite confusion and uncertainty "of titles. "A presumption arising from the grant "itself makes it prima facie evidence of the power "of the officer making it, and throws the burden of "proof upon the party denying it."

Again, in the case of the *United States* v. *Arredondo*, 6 Pet., 728, this Court said:

"The grants of Colonial governors before the "Revolution have always been and are yet taken as "plenary evidence of the grant itself as well as of "authority to dispose of the public lands. Its "actual exercise, without any evidence of disavow-"al, revocation or denial by the King and his SUBSE-"QUENT acquiesence and presumed ratification are "sufficient proof in the absence of any evidence to "the contrary (SUBSEQUENT to the grant) of the "royal assent and the exercise of his prerogative "by his local governors. This or no other Court "can require proof that there exists in every gov-"ernment the power to dispose of its property. In "the absence of any evidence we are bound to pre-"sume and consider that it exists in the officers "and tribunals who exercise it by making grants."

This presumption of law as announced by this Court, we submit, is conclusive of the question of authority of the Governor of Cohuila-Texas to execute this grant to Royuela and Beales. At least it concludes the matter upon this demurrer and the burden is by law upon the demurrant to disprove this authority.

If it is contended that the title of The Inter-State Land Company and its tenants is inchoate and incomplete because of the successful revolution of Texas, whereby its independence of the Mexican Government was achieved prior to the performance of the CONDITIONS annexed to the grant to Royuela and Beales, and that therefore The Inter-State Land Company and its tenants have not such rights in the property involved as can be recognized by the Court, we submit that the law applicable to these Mexican grants as expounded by this Court furnishes abundant answer to such objection. And in this connection we will now say that for the purpose of the demurrer it is wholly immaterial whether the title to Royuela and Beales as communicated to The Inter State Land Company and its tenants is legal or equitable. This suit is in chancery and involves lands, the possession whereof is admitted to be in The Inter-State Land Company and its tenants. The Court of chancery will adequately protect an equitable title coupled with possession against the disturbance of one having no title and no possession, the same as if the full legal title were involved. This doctrine is firmly settled by

the decision of this Court in *Tameling* v. *United States Freehold and Emigration Co.*, 93 U. S. Rep., 66, wherein the Court uses the following language;

"We have frequently held that individual "rights of property in the territory acquired by the "United States from Mexico were not affected by "the change of sovereignty and jurisdiction. They "were entitled to protection, whether the party had "the full and absolute ownership of the land or "merely an *equitable* interest therein which required "some further act of the Government to vest in "him a perfect title."

But how strong is the light cast upon the question by the decision of this Court in the case of the *United States* v. *Moreno*, 1 Wall., 400, wherein the Court announced the doctrine applicable to this class of cases in the following language:

"Cession to the United States did not impair "the rights of property. They are consecrated by "the law of nations and protected by the treaty "of Guadalupe Hidalgo, which is but a sanction of "the pre-existing law of nations. A right valid "before the cession was equally valid afterwards. "It is the Court's duty to see that no rightful claim "is rejected. No nation can have any higher inter- "est than the right administration of justice."

And in the case of *Coffey* v. *Grover*, 8 U. S. Sup. Ct. Rep'r, decided at the October term, 1887, this Court in further pursuance of this doctrine said:

"It is no doubt the received doctrine that in "the cases of ceded or conquered territory the "rights of private property in land are respected. "Grants made by the former government, being "rights when made, are not usually disturbed. "Allegiance is transferred from one government to "another without any subversion of property. This

"doctrine has been laid down very broadly on "several occasions by this Court, particularly in "cases arising upon grants of lands made by the "Spanish and other governments in Louisiana "and Florida before these countries were ceded to "the United States. It is true that the property "rights of the people in those cases were protected "by stipulations in the treaty of cession as is usual "in such treaties. The Court took greater latitude "and established the general principle of interna- "tional law that the mere cession of territory "operates only upon the sovereignty and jurisdic- "tion, including the right of public domain, and "not upon the property of individuals which had "been segregated from the public domain before "the cession."

Again in the case of *Leitensdorfer* v. *Webb*, 20 How., 177, this Court reaffirms the doctrine of International law as announced by Vattel, to-wit:

"The conquerer lays his hands on the posses- "sions of the State while private persons are per- "mitted to retain theirs. They suffer but indirectly "by war, and to them the result is that they only "change masters."

And again in Hornsby's case (10 Wall., 242) this Court said:

"And independant of the treaty they were "entitled to such protection by the law of nations, "according to which, as said by this Court, in the "case of *Strother* v. *Lucas*, the rights of property "are protected even in the case of a conquered "country and held sacred and inviolable when it is "conceded by treaty, with or without any stipula- "lation to that effect."

The sum and substance of all these cases is found in the language of Chief Justice Marshall in the case of the *United States* v. *Percheman*, 7 Pet., 86, wherein he said:

"It may not be unworthy of remark that it is "very unusual, even in cases of conquest, for the "conquerer to do more than displace the sover- "eign and assume dominion over the country. "The modern usage of nations, which has become "law, would be violated, and that sense of justice "and right which is acknowledged and felt by the "whole civilized world would be outraged if pri- "vate property should be generally confiscated and "private rights annulled. When people change "their allegiance, their relation to their ancient "sovereign is dissolved, but their relations to each "other and their rights of property remain undis- "turbed. If this be the modern rule even in cases "of conquest, who can doubt its application to a "case of amicable cession of territory? A cession "of territory is never understood to be a cession "of the property belonging to its inhabitants. The "king cedes that only which belongs to him. Lands "he had previously granted were not his to grant. "Neither party could so understand the cession, "and either party would consider it an attempt "to wrong individuals, and condemned by the "practice of the whole civilized world. The ces- "sion of the territory by its name from one sov- "ereign to another and conveying the compound "idea of surrendering at the same time the lands "and the people who inhabit them, would be nec- "essarily understood to pass sovereignty only and "not to interfere with private property."

The fact that the territorial deputation did not pass upon and approve the application of Royuela and Beales for this grant is wholly immaterial. The Mexican National Colonization Laws did not require the territorial deputation of Ayuntamiento to take any part in the process which effected an EMPRESARIO grant. The plain letter and intent of this law establishes that fact. In all grants other

than EMPRESARIO the approval of the territorial deputation was needful. Section 508, page 150, of Hall's Mexican Law provides:

"The grants made to families or to private "persons shall not be held to be definitively valid "without the previous consent of the territorial "deputation."

But section 510 of the same law provides:

"The grants made to EMPRESARIOS for them to "colonize with many families shall not be held to be "definitely valid until the approval of the Supreme "Government be obtained."

The Supreme Government named in this law is the Supreme Government of the State. That is apparent from the reading of section 504 of Hall's Mexican Law which provides:

"The Governors (gefes politicos), of the ter-"ritories are authorized in compliance with the "law of the General Congress of the 18th August, "1824, and under the conditions hereinafter speci-"fied, to grant vacant lands of their respective ter-"ritories to such contractors (EMPRESARIOS), fami-"lies of private persons, whether Mexican or for-"eigners who ask for them for the purpose of cul-"tivating and inhabiting them."

It will be observed that this grant does not emanate from the Governor of a Territory, but from the Governor of Coahuila and Texas. The case therefore is stronger than if the grant had been made by a Territorial Governor. But even in the case of a grant by a Territorial Governor,—the want of approval by the Territorial Deputation or Assembly would affect nothing. This has been so often decided by this Court that it would not

seem necessary to cite any authority; but upon this point we will out of caution refer to what the Court has said in the premises. In the case of the United States against Fremont, 17 How., 562, this Court said:

"And the omission or inability of the public "authority to perform their duty cannot, upon any "sound principle of law or equity, forfeit the prop- "erty of the individual to the State. It undoubt- "edly disabled him from obtaining what is called a "definitive title showing that all the conditions had "been performed; but it could not divest him of "the right of property he had already acquired by "the original grant, and revest it in the State."

And in Reading's case, 18 How., 4, this Court said:

"It is said the grant was provisional only, hav- "ing been made subject to the approval of the De- "partmental Assembly; and as that had not been "given, that it passed no such interest in the land "to Reading as entitled him to a confirmation of "the grant."

And on page 7, IDEM, this Court said:

"It was also urged that no title passed by the "grant as it had not received the approval of the "Departmental Assembly. An examination of the "decree of August 18, 1824, and the regulations of "November 21, 1828, leads us to a just result, a "right and title passed by the Governor's grant, but "its definitive validity was suspended for the ap- "proval of the Assembly, and so it continued to be "suspended until its approbation had been given, "when the title became definitive; but if that was "refused, it did not take away nor in any manner "qualify the grantee's title, but only kept its final "validity in suspension until the grant had been "rejected by the Supreme Government of the Re- "public, it being the duty of the Governor after its

"rejection by the Assembly to forward the docu-
"ments of title to the Supreme Government for
"its decision. Further we must infer from the
"same decrees, and particularly from the fifth arti-
"cle of November 21, 1828, that it was the duty of
"the Governor, and not of the grantee, to forward
"grants of land given by him to the Departmental
"Assembly. The latter might very well, after that
"had been done by the Governor, solicit the ap-
"proval of the Assembly personally or by an agent,
"by all these considerations which had gained him
"the Governor's favor. But if the Governor failed
"to transmit the documents for any cause, the
"grantee's title continued just what it was when
"the grant was given. Nor could any neglect or
"refusal of the Governor to transmit the grantee's
"document of title to the Assembly take from him
"his right to the land, if the grant had been made
"with due regard to what the decree of 18th Aug-
"ust, 1824, required, and in conformity with the
"cautionary regulations of the 21st November,
"1828. In other words, from our reading of the
"decree, the Governor could not either directly
"recall the grant made by him, or indirectly nul-
"lify it when it had been conferred conformably
"with them. These decrees prescribe a course of
"action for such grant, and imposed upon the Gov-
"ernor the execution of it. When, then, the
"archives of the Territory of California did not
"show the Governor's grants of land had been
"sent to the Departmental Assembly, or that hav-
"ing been sent, they had been rejected, and that
"after such rejection they had not been sent by the
"Governor making the grant to the Supreme Exec-
"utive Government for its final decision—the titles
"of the grantees were just what they were at their
"beginning, and are sufficient, now that the Terri-
"tory has been transferred to the United States, for
"conformation under its statutes."

And upon page 8, IDEM, this Court further said:

"And we entirely concur that the want of such

"approval in so many instances as are shown by "the archives of the Territory was owing to the "fact that the political affairs of the territory had "been in confusion for several years preceding its "cession to the United States, that the Assembly "had seldom been called together, and when assem- "bled its sessions had been brief and occupied with "the consideration of pressing matters of a public "character, and that the Governors making the "grants had very much neglected to present them "to the Assembly for approval. We are of the "opinion that Reading's right and a confirmation "of his grant cannot be refused on account of its "not having been approved by the Departmental "Assembly."

And in Larkin's case in 18 How., 561, this Court further said :

"It is also objected that the grant does not con- "tain the conditions of confirmation by the Depart- "mental Assembly and also that there had been no "confirmation by that body. The fifth regulation "of November 21, 1828, provides that grants to "individuals or families shall not be definitely valid "without the previous approbation of the Depart- "mental Assembly to which the respective *expedi-* "*entes* shall be referred. There is nothing in this "or any other regulation that requires this condi- "tion to be inserted in the patent. The sixth regu- "lation provides that 'if the Governor does not "obtain the approval of the Departmental Assem- "bly he shall report the same to the Supreme Gov- "ernment together with the *expedientes* for its "decision.' Inasmuch as the record of the title was "found returned by the Governor to the Govern- "ment archives, and not forwarded to the Supreme "Government, it is insisted on behalf of the claim- "ant that the fair presumption is that the grant had "been approved ; otherwise it would not have been "returned to the Government archives. However "this may be, it is not important to determine, as it

"was settled in the case of *Freeman* v. *The United* "*States*, 17 How., 542–563, that the omission to pro- "cure the confirmation under circumstances exist- "ing similar to those attending this grant, did not "operate to defeat or void the title."

Again in Johnson's case, 1 Wall., 329, this Court said :

"We have frequently decided that the want of "approval by the Departmental Assembly will not "affect the validity of the grant."

In Hornsby's case, 10 Wall., 328, Justice Field, delivering the opinion of this Court uses the following language :

"And the clause subjecting the grant to the "approval of the Departmental Assembly did not "prevent the title from passing to the grantees "upon the execution of the instrument. Such "approval was not a condition precedent to the "vesting of the title. According to the regula- "tions of 1828, the authority to make grants of "land in California was lodged solely with the Gov- "ernor and was not shared by him with the Assem- "bly. That body only possessed the power to "approve or disapprove the grants made by him. "Until such approval the estate granted was sub- "ject to be defeated ; with such approval the grant "became, as it was termed in the regulations, defi- "nitively valid : that is, it ceased to be defeasible, "and the estate was no longer liable to be divested "except by proceedings for breach of its other con- "dition. Besides it was the duty of the Governor, "and not of the grantees, to submit to the Assem- "bly grants issued by him for their approbation. "His neglect in this respect suspended the defini- "tive validity of the grant ; that is, it prolonged "the liability of the estate to be defeated by the "action of the Assembly and of the Supreme Gov- "ernment thereon, to which the matter was refer- "red in case the approval of the Assembly was not

"obtained and no other consequence followed. His "neglect was not permitted to divest the grant-"ees of the estate already vested in them."

If it be contended that the Grant to Royuela and Beales was not good because of failure to perform the conditions annexed thereto, we think a ready and ample response to that objection can be furnished. From what has already been shown concerning the nature of the titles claimed by The Inter-State Land Company and its tenants we hold that at the date of this grant, to-wit: On the 14th March, 1832, the title passed from the Mexican Government to Royuela and Beales, and could not be resumed by that Government by any process known to law until the expiration of the six years named in the Grant; and then only by a proceeding in the nature of an inquest of office. All the conditions precedent of this grant had been complied with. The condition of introduction of the families named in the grant was a CONDITION SUBSEQUENT: and if its performance was prevented by any act of Coahuila and Texas (or of Texas, one of the constituents in question) then as to the Mexican Government the condition was discharged and the title became absolute. If this be established as to the Mexican Government, which was the original sovereign, then it is true as to all the world. "A grant "is a contract executed," and not executory.

Fletcher v. *Peck*, 6 Cranch, 135.

But of course the condition subsequent annexed

to the grant would, in a proper proceeding to be presently discussed, operate as a defeasance of the title. It is profitable to remember that the 22d Article of the National Decree of January 4th, 1823, provides that "The date of the concession for land "constitutes an inviolable law for the right of prop- "erty and legal ownership."

By section 2481 of Hall's Mexican Law, it is provided:

"The condition will be held as fulfilled which "fails to be realized by the voluntary act of the "obligated party."

This Court has over and again held the Mexican law to be the controlling rule with respect to these Mexican grants; but the treaty of Guadalupe Hidalgo, which is the most sacred bond known to our law, by the second article of its protocol provides that "these grants, not- "withstanding the suppressson of the 10th article "of the treaty, preserve the legal value which "they may possess, and the grantees may cause "their legitimate titles to be acknowledged before "the American tribunals. Conformably to the law "of the United States legitimate titles to every "description of property personal and real existing "in the ceded territories are those which were legit- "imate titles under the Mexican law in California "and New Mexico up to the 13th of May, 1846, "and in Texas up to the 2d of March, 1836."

We will, therefore, without further argument consider that the Mexican law, as is stated, fur-

nishes the rule of property in these cases. It is a part of history that Royuela and Beales took possession of this land and made extensive surveys of the same, even sectionizing a large part. Kennedy in his first volume of the history of Texas, from pages 182 to 196 inclusive, gives the field notes of Alexander Le Grande, the surveyor of Royuela and Beales who made this survey. The maps attached to his work show this grant and set forth the survey by Le Grande.

This Grant is especially named as among the valid grants specified by Article 246, page 154, Paschal's Digest. Now the fact is historical that within three years and a half from the execution of this grant Texas broke out into open rebellion and resistance to the Mexican Government and within three years and ten months declared herself an independent Republic, and ordered by organic law that the "EMPRESARIOS suspend all further operations." Texas does not allege any wrong doing on the part of these EMPRESARIOS as an excuse for that organic law. That law is leveled at all and suggests no fault of any. The reason for this action is obvious. These EMPRESARIOS were about to bring large numbers of heads of families into Mexico who were to be loyal to Mexico, and armed soldiers pledged and sworn to defend Mexico against all enemies foreign and domestic. The more Mexico wanted these EMPRESARIOS to perform their obligations, the more Texas wanted them not to do so.

Therefore by the voluntary act of Texas, one

of the original parties to this EMPRESARIO contract, the condition of the Grant as to the introduction of the families was rendered impossible and therefore WAIVED. This condition, as we have said, was a CONDITION SUBSEQUENT.

In a recent case this Court has passed upon this question. In *Gonzales et al*, v. *Ross* and the *International Railroad Co.*, on March 14th, 1887, Justice Bradley, in delivering the opinion of the Court, said:

"Titles issued to colonists, and purchasers "under the colonial laws of Coahuila and Texas "were of an entirely different character. Under "those laws the title of possession was the final "title, vesting the fee absolutely in the grantee. "Conditions were annexed * * * but "they were CONDITIONS SUBSEQUENT upon the non-"performance of which the titles were subject to "forfeiture; but until which the fee or proprietor-"ship was in the grantee. They conveyed all the "estate and interest which the government had to "convey as absolutely and to the same extent as "did the delivery of the final title or final act of "confirmation by the Spanish Government after "the performance of the conditions. No act of "confirmation by the Government was required or "was contemplated by the colonization laws; but "when the title of possession issued, the Govern-"ment had done the final act on her part."

And in the same case this Court held that no private party can take advantage of this forfeiture. If there was a forfeiture only the Government which had jurisdiction over the land could claim its benefit. Upon this point this Court said:

"As to the supposed forfeiture for non-fulfill-"ment of conditions of the grant, the only condi-

"tion named therein is the payment of the purchase "money. This was required by the thirteenth arti- "cle of the 28 April, 1832, which on the subject "declares as follows:

"'The purchaser shall deliver one-fourth of the "'value of the land granted to the State Treasurer, "'or where the executive designates at the time of "'the sale, and the remaining three-fourths shall be "'paid, the first on the second, the second on the "'third, and the last on the fourth year, under pen- "'alty of forfeiting the right acquired in the part "'wherein the provision is not fulfilled.'

"That is, as we understand it, the forfeiture "was to be in proportion to the amount not paid. "Now it is clear that the first payment was made "in advance, for the grantee could not have ob- "tained possession of his document of cession "without such payment; and that he did obtain "it is manifest, for the testimonio shows that it "was exhibited to the commissioner. The other "payments were to be made afterwards, and after "the land, were extended; and the condition of "forfeiture for non-payment was a CONDITION SUB- "SEQUENT. Whether these payments were made or "not made, was not shown. If not made, then "there was a forfeiture which the government "could enforce either by judicial proceedings, "or, perhaps, by granting the land to other par- "ties. This forfeiture accrued at the revolu- "tion to the Republic of Texas, and to the State "of Texas when it became a state. By the con- "stitution of the state adopted in 1845, it was "declared that 'all fines, penalties, forfeitures, and "'escheats which have accrued to the Republic of "'Texas, under the constitution and laws shall "'accrue to the State of Texas, and the legislature "'shall by law provide a method for determining "'what lands have been forfeited or escheated;' no "such law was ever passed. We held in *Airhart* v. "*Massieu*, 98 U. S. Reports, 491–498, that under "this provision the legislature must first act before "any proceedings can be taken to annul the title

"of an alien or any other escheatable titles. And "this proposition would seem to apply with equal "force to forfeitures. At all events, if a forfeiture "for non-payment or other CONDITION SUBSEQUENT "can be averred by a private person, it could "only be after he has shown some right to the land "in himself by virtue of a subsequent purchase or "grant from the sovereignty of the soil; and hence "it can only be set up by way of defense after such "purchase or sale is shown."

In fact the petition as now amended (all the allegations of which are admitted by this demurrer to be true) shows that the Mexican Government by its custom and practice, considered that under the laws of the Constituent Mexican National Congress and the law of the Province of Coahuila-Texas the title in fee was vested in Don Carlos Beales, from whom, as it is admitted by the pleadings, The Inter-State Land Company derraigns its title.

Whatever may be the nature of the title to Royuela and Beales, it seems certain that under the decision of this Court in the case of *Adams* v. *Norris*, 103 U. S., 593, the act of confirmation by Congress and the Patent issued thereunder in favor of the grant by Armijo to Beaubien and Miranda is utterly worthless as a muniment of title for the purposes of this suit.

The record also shows a confession that the Maxwell Land Grant Company has never been in possession of the lands involved herein.

Therefore what concern is it to them whether

or not the title in fee passed with the grant to Royuela and Beales ?

The record also shows a confession that the Mexican colonization law was repealed several years before the grant by Armijo to Beaubien and Miranda.

The state of the case, therefore, would seem to be this, to-wit: That under the decision in *Adams* v. *Norris*, the Government of the United States never made any pretense that it had any title to or interest in these lands, and that the act of Congress in confirming the grant by Armijo, and the Patent issued thereunder, are futile.

The Inter-State Land Company is admitted to be in possession of this property by virtue of a prior formal Grant made at the time when the EMPRESARIO laws were in full force and that its title was by the Mexican Government considered to be fee simple.

Added to these considerations, in *Tameling* v. *United States Freehold and Emigration Company*, 93 U. S., 66, this Court, in construing the treaty of Guadalupe-Hidalgo, said: "We have frequently "held that individual rights of property in the ter- "ritory acquired by the United States from Mexico " were not affected by the change of sovereignty "and jurisdiction. They were entitled to protec- "tion whether the party had the full and absolute "ownership of the land or merely an equitable " interest therein which required some further act of "the Government to vest in him a perfect title." The

"further act of the Government" referred to in this decision was the act of Congress of date March 3d, 1851, whereby the District Courts of the United States were given jurisdiction (with right of appeal) to confirm or reject Mexican Land Grants in a part of the territory acquired from Mexico by Treaty. But that act of Congress was confined to territory other than that embraced in the Texas Cession to the United States of date November 25, 1850. Congress has never passed an act requiring grants to lands embraced in the "Texas Cession" to be passed upon by any Court or commission; and therefore, of course, as to such lands this Government has never attempted to interfere with any right of property which was derraigned from Mexico. This proposition is substantiated by the following language taken from the decision of this Court in the *United States* v. *Moreno*, 1 Wall., 400. "Cession to the "United States did not impair the rights of prop- "erty. They are consecrated by the law of nations "and protected by the treaty of Guadalupe-Hidal- "go, which is but a sanction of the pre-existing "law of nations. A right valid before the cession "was equally valid afterwards. *It is the Court's* "*duty to see that no rightful claim is rejected. No* "*nation can have any interest higher than the right* "*administration of justice.*"

Now, with the confession in the record, that the Grant was made to Beaubien and Miranda more than four years after the repeal of the Mexican EMPRESARIO law, and the further confession in the

record that The Inter-State Land Company is in possession of these lands and that the Maxwell Land Grant Company has never had possession, with what consistency can it be urged that the Maxwell Land Grant Company is entitled to judgment upon this demurrer. And above all things what right has the Maxwell Land Grant Company to raise the question whether or not the title in fee passed to the lands involved herein by the Grant to Royuela and Beales.

In connection with decisions of this Court, attention is called to decree No. 16 of Coahuila-Texas, passed March 24, 1825, whereby its eighth article provides that the executive shall alone pass upon the application for an EMPRESARIO grant, and further by

Article 9 it is provided that the EMPRESARIO contracts shall be "guaranteed by this law" and further it is provided by

Article 27 *that the empresarios may alienate their lands,* whereas it is also provided by the same article that "*the other settlers shall be authorized to alien-*"*ate their lands when they have completed the cultiva-*"*tion thereof, and not before.*"

The distinction thus clearly made between the title held by EMPRESARIOS and the title held by other settlers by virtue of grants made by the Mexican government should have great weight with the Court in considering the point now under discussion.

The fact that by said Article 27 the EMPRESARIO had the right to alienate the lands embraced in his grant immediately after obtaining the grant and prior to the introduction of any of the families required by the Mexican law, whereas by the very same article no other persons were so permitted (excepting the military) to alienate their title until the full and complete performance of all the conditions contained in the grant, furnishes the most potent evidence that by the Mexican law the conditions annexed to the EMPRESARIO grant were CONDITIONS SUBSEQUENT. If these conditions were CONDITIONS SUBSEQUENT, then as the shadow follows the substance, the result must be that in an EMPRESARIO grant the title passed subject to defeasance for non-performance of the CONDITIONS SUBSEQUENT.

This position would seem to be made still more impregnable when it is remembered that by Section 511, upon page 151, Hall's Mexican Law concerning these EMPRESARIO grants, the following provision is to be found: "The definitive grant "asked for being made, a document signed by the "governor shall be given, *to serve as a title* to the "interested party, wherein it must be stated that "the said grant is made in exact conformity with "the provisions of the laws, in virtue whereof pos-"session shall be given."

The section just above quoted is a part of the "General Rules and Regulations for the Coloniza-"tion of Territories of the Republic," adopted at Mexico on the 21st day of November, 1828.

In the *United States* v. *Vigil*, 13 Wall., 450–451, this Court said: "It has been repeatedly decided "by this Court that the only laws in force in the "territories of Mexico for the disposition of the "public lands, with the exception of those relating "to missions and towns, are the act of the Mexican "Congress of 1824, and the regulations of 1828."

But in *Peralta* v. *The United States*, 3 Wall., 440, this Court expressly construed the above provision of Mexican law and with reference thereto uses the following language: "The record was the "grant and without it the title was not divested. "*The Governor was required to give a document to "the party interested which was evidence of title and "enabled him to get possession.*"

In *DeHarro* v. *United States*, 5 Wall., 599, this Court construed the Spanish word "titulo" *to mean the instrument which conveys title in fee in the usual acceptation of the term.*

It has often been decided by this Court that the custom and practice of the Mexican officials under the Mexican land grant law should be considered by the Court in passing upon these titles.

In the case of the *United States* v. *Jenks*, 2 Pet., 225, this Court said:

"Undoubtedly the presumption is in favor of "the validity of every grant issued in the forms pre-"scribed by law, and it is incumbent upon him who "controverts it to support his objections. The "whole burden of proof lies on him."

And again this Court in the case of the *United States* v. *Arredondo*, 6 Pet., 726, said :

"The universal construction of the rule is that the "acts of public officers in disposing of public lands "by color or claim of public authority are evidence "thereof until the contrary appears by the show- "ing of those who oppose the title under it, and "deny the power by which it is professed to be "granted. Without the recognition of this princi- "ple there would be no safety in title papers, and "no security for the enjoyment of property under "them. The grant is void unless the grantor had "the power to make it; but it is not void because "the grantee does not prove or produce it. The "law supplies this proof by legal presumption "arising from a full, legal and complete execution "of the grant under all the solemnities known or "proved to exist or to be required by the laws of "the country where it is made and where the land "is situated."

Again, in the case of the *United States* v. *Peralta*, 19 How., 347, this Court said :

"We have frequently decided that the public "acts of public officers purporting to be exercised "in an official capacity and by public authority "shall not be presumed to be usurped, but that a "legitimate authority had been previously given or "subsequently ratified. To adopt a contrary rule "would lead to infinite confusion and uncertainty "of titles. A presumption arising from the grant "itself makes it prima facie evidence of the power "of the officer making it, and throws the burden of "proof upon the party denying it."

How can there be any doubt that the title passed in this case, if the action of the Governor, Jose Maria de Letona (the properly constituted Mexican official) in construing the provisions of

the EMPRESARIO law made to Royuela and Beales on the 14th day of March, 1832, during the time when the EMPRESARIO laws were in force, the grant which in this case is admitted to be *formal* and *genuine*, wherein by the eleventh item thereof it is provided as follows:

"In reference to all matters not provided for "expressed in these articles, the EMPRESARIOS, or "the new settlers holding under them, shall abide "and be governed by the Federal Constitution and "laws of this State.

"And His Excellency, the Governor of the "State, as also the citizen, Jose Manuel Royuela, "and John Charles Beales, having agreed in the "articles of this contract or grant, and bound "themselves respectively to the performance and "observance thereof, afterwards signed the same "before me, the undersigned, Secretary to this Gov-"ernment.

"*And having been directed to give the Empresarios "this certified copy of all the documents relating to the "grant, that they may serve them as security and as a "formal title thereto, the originals will according to "law remain filed and recorded in the Secretary's "office under my charge.*"

"Dated, City of Leona Vicario, the fourteenth "of March, one thousand, eight hundred and thirty-"two."

[Signed.] JOSE MARIA DE LATONA,
JOHN CHARLES BEALES,
JOSE MANUEL ROYUELA.
"SANTIAGO DEL VALLE, Secretary.

"The foregoing is copied from the original doc-"uments filed and recorded in the Secretary's office, "under my charge, from whence it was ordered to "be taken by His Excellency, the Governor.

"City of Leona Vicario, the fourteeth of March, "one thousand, eight hundred and thirty-two.

"[Signed.] SANTIAGO DEL VALLE, Secretary."

If therefore it be true, as this Court has said, that the custom and practice of the lawfully constituted Mexican officials is to be observed with reference to these grants, we might safely rest the point upon the act of the Governor of Coahuila-Texas, whereby in conclusion of the instrument given by him to Beales and Royuela, he used the following language, to-wit: "And having been "directed to give the EMPRESARIOS this certified "copy of all the document relating to the grant, "that they may serve them as security and as a for- "mal title thereto, the originals will according to "law remain filed and recorded in the Secretary's "office under my charge."

The Court will also observe that section 277, page 106, Hall's Mexican Law, provides "*The date of "the concession for lands constitutes an inviolable law "for the right of property and legal ownership.*" Nothing would seem clearer than the proposition that the Governor of Coahuila–Texas understood the force and effect of this provision of Mexican law at the time when he made this grant and used the words that this should serve Royuela and Beales, "as a "formal title thereto"

Now if the able counsel for the demurrant will show by any law, either Mexican or decision of the Supreme Court of the United States, that prior to the full efflux of six years from the date of the grant to Royuela and Beales the Mexican Government could, during the time of its jurisdiction over the property involved, have ousted Royuela and

Beales from the possession of the same, then we are willing to concede that our views concerning the law which govern in this case are utterly erroneous.

As before said this Court has ruled time and again that it devolves upon the party who attacks this grant to make good the objections against it. But we will further proceed to show why no such complaint against the title can be sustained.

The eleventh article of Decree No. 128, of Coahuila–Texas, passed April 1st, 1830, provides: "The "Executive shall cause the contracts that are not "carried into effect, in the time stipulated, to be "published, that the respective lands may be under-"stood to have again become vacant and open to "colonization."

And section 1138, page 326, Hall's Mexican Law, provides: "These denouncements will be made "before the Departmental Government (goberna-"cion), directly, or through the medium of the res-"pective employes in each State."

If this process, which is in the nature of an inquest of office, was required by the Mexican law before the title granted to the EMPRESARIOS could be resumed by the Government for non-performance of the conditions contained in such grants, with what show of reason can it be contended that the condition of introducing the families named in this grant is not a CONDITION SUBSEQUENT.

We are not left to our own reasoning to determine the force and effect of these Mexican laws

with reference to land grants. The case of *Gonzales et al.* v. *Ross et al.*, decided by this Court upon the 14th of March, 1887, adopts the opinion of the Supreme Court of Texas, in *Hanrick* v. *McKinney*, 7 Tex., 384–451, wherein the Court uses the following language, to-wit: "Titles issued to col-"onists and purchasers under the colonial laws "of Coahuila and Texas were of an entirely dif-"ferent character. Under those laws the title of "possession was the final title, vesting the fee ab-"solutely in the grantee. Conditions were an-"nexed, * * * but they were CONDI-"TIONS SUBSEQUENT, upon the non-performance of "which the titles were subject to forfeiture, but "until which the fee or proprietorship was in the "grantee. They conveyed all the estate and in-"terest which the Government had to convey as "absolutely and to the same extent as did the "delivery of the final title, or the final act of "confirmation by the Spanish Government after "the performance of the conditions. No act of "confirmation by the government was required, "nor was contemplated by the colonization laws, "but when the title of possession issued, the gov-"ernment had done the final act on its part."

And in the same case this Court said with regard to parties who may insist upon the forfeiture of a land grant title for non-performance of such conditions that if they were not performed "then there was a forfeiture which the Government "[Mexican] could enforce, either by judicial proceed-

"ings, or, perhaps, by granting the lands to other "parties. This forfeiture accrued, at the revolu- "tion, to the Republic of Texas, and to the State "of Texas, when it became a State. By the Con- "stitution of the State, adopted in 1845, [Art. "XIII] it was declared that all fines, penalties, for- "feitures and escheats, which have accrued to the "Republic of Texas, under the constitution and "laws shall accrue to the State of Texas, and the "Legislature shall by law provide a method for "determining what lands have been forfeited or "escheated. No such law was ever passed prior to "the trial of this cause. We held in *Airhart* v. "*Massaiu*, 98 U. S., 491–493, that under this provis- "ion, the Legislature must first act before any pro- "ceedings can be taken to annul the title of an "alien, or any other escheatable title; and this "proposition would seem to apply with equal force "to forfeitures. At all events, if a forfeiture for "non-payment or other CONDITION SUBSEQUENT, can "be availed of by a private person, it can only be "after he has shown some right to the lands in "himself, by virtue of a subsequent purchase or "grant, from the sovereignty of the soil, and hence "it can only be set up by way of defense."

And in the very same case this Court said: "By the rules of law, possession will be presumed "to accompany ownership until the contrary is "proven; and constructive possession consequent "upon legal ownership is sufficient against mere "trespassers, that is against those who do not show

"some right of possession. So with regard to the "archive of title, it was held in *Byrnex* v. *Fagan*, "[16 Texas, 391–398] that where there is a testi- "monio there is a presumption that the original is "among the archives of the land office, its proper "place of deposit. At all events, it is for the "defendants to show by proper proof that it is not "there."

And in the very same case this Court said: "The presumption which is always indulged in in "favor of the validity of acts of officers of a for- "mer government, warrants the conclusion that "the officer acted in conformity with the law and "not in violation of it."

But the doctrine just announced by this Court is not recently made. In the *United States* v. *Noe*, 23 How., 312, this Court re-affirmed the decision in the *United States* v. *Kingsbury*, 12 Pet., 476, and said: "The Court will liberally construe the performance "of conditions, precedent or subsequent, in such "grants. It has not nor will it apply in the con- "struction of such conditions in such cases the "rules of the common law."

But in all of the cases which have been passed upon by this Court wherein the validity of land grants under treaty stipulations were involved, with great confidence we refer to the case of the *United States* v. *Arredondo*, 6 Pet., 691, *et sequentes*.

The grant in this case was made under the very same EMPRESARIO law as the one now presented at the bar. The Mexican EMPRESARIO law was the

Spanish EMPRESARIO law. The case of Arredondo, we claim, is a clear construction of the Mexican as well as of the Spanish law, which are transcripts, each of the other.

In Arredondo's case the Government of Spain granted him a tract of land situated in the district of Alachua, in the State of Florida, and in the said grant the following is the literal condition, to wit:

"Whereof, on the day of yesterday, I provided "the act which follows: Seen. In virtue of the "Royal order of the 3d of September, in this year, by "which in appointing me superintendent of the two "Floridas, his Majesty commands me in express terms "to provide for the increase of population in those pro- "vinces by every means which my prudence and zeal "may dictate, with the concurrence of his lordship the "fiscal, and with the report of the surveyor-general "of the said province, the tract called Alachua, in East "Florida, is declared to belong to the royal domain. "In consequence whereof, and in attention of the noto- "rious integrity and fidelity to the known capital and "other good qualities of Don Fernando de la Maza "Arredondo and son, I grant to them the part which "they solicit of the said tract belonging to the royal "domain in conformity to the sovereign dispositions on "this matter, and with the precise condition to which "they obligate themselves to establish thereon two hun- "dred families, which ought to be Spanish with all the "requisites which are provided for, and others which "will be provided by this superintendency, in vir- "tue of the said Royal order; the said establishment

"*to begin to be carried into effect in the term of three* "*years at furtherest, without which this grant will be* "*null and void.*"

The cession of the Territory embraced in this portion of Florida having become a part of the public domain of our Government by virtue of its treaty with Spain, was never settled with the 200 Spanish families that Arredondo had by virtue of the grant obligated himself to introduce.

After this cession the question arose between Arredondo and the United States, and was presented to this Court to determine whether the Government or Arredondo had the title to the land.

The case was argued *pro* and *con* by the greatest lawyers that have ever been enrolled in this the greatest of all tribunals.

And the principal point made by Mr. Taney, the Government counsel, was that the grant had lapsed for non-compliance with the condition of introducing and settling upon the premises the 200 Spanish families as specified in the condition of said grant. This Court in deciding this point which carried the case in favor of Arredondo, used the language as follows, to-wit:

" We now consider the conditions on which the " grants were made: According to the rules and " the law by which we are directed to decide this " case, there can be no doubt that they are *subse-* " *quent.* The grant is in full property in fee an " interest vested on its execution, which could only " be divested by the breach or non-performance of

"the conditions, which were that the *grantees should* "*establish on the lands two hundred Spanish families,* "*together with the requisites pointed out, and which* "*shall be pointed out by the superintendency.*"

* * * *

"The condition of settling two hundred fam- "ilies on the land has not been complied with in "fact; the question is has it been complied with in "law, or has such matter been presented to the "Court as dispenses with the performance and "divest the grant of that condition."

"It is an acknowledged rule of law that if a "grant is made on a CONDITION SUESEQUENT and its "performance becomes impossible by the act of the "grantor, the grant becomes single."

"We are not prepared to say that the condi- "tion of settling two hundred Spanish families in "an American territory has been or is possible; "the condition was not unreasonable or unjust at "the time it was imposed; its performance would "probably have been deemed very fair and ade- "quate consideration for the grant, had Florida "remained a Spanish province. But to exact its "performance after its cession to the United States, "would be demanding the *summum jus* indeed, and "enforcing a forfeiture on principles which if not "forbidden by the common law, would be utterly "inconsistent with its spirit."

"If the case required it we might feel ourselves "at all events justified, if not compelled to declare "that the performance of this condition had become

"impossible by the act of the grantors; the transfer "of the territory, the change of Government, man- "ners, habits, customs, laws, religion, and all the "social and political relations of society and of "life."

* * * *

"The proceeding is in equity, according to its "established rules; our decree must be in conform- "ity with the principles of justice, which would in "such a case as this, not only forbid a decree of "forfeiture, but impel us to give a final decree in "favor of the title conferred by the grant."

"It has been objected to the validity of the "grant that it exceeds the quantity authorized by "the laws of the Province. That he (the intend- "ent) had power to make the grant, the terms and "extent of which were within his discretion, the "proper exercise of which this Court has neither "the power or the right to judge."

As was above said, our contention is that prior to the expiration of six years from the date of the grant to Royuela and Beales, the Mexican Government under no circumstances could have claimed a resumption of title without the proceeding of denouncement according to the law then in force which required that "The executive shall cause the "contracts that are not carried into effect in "the time stipulated, to be published, that the res- "pective lands may be understood to have again "become vacant and open to colonization."

It is a maxim that the law does not require a vain or useless thing. If therefore the title did not pass from the Mexican Government and Coahuila–Texas to the lands involved in this suit by virtue of the grant in question, then why should there be such a provision of Mexican law requiring this process of denouncement. The law says that that process was necessary in order that lands embraced in grants whereof the conditions were not performed, may be understood to have again become vacant and open to colonization.

Art. 11. Decree of Coahuila–Texas April 1st, 1830.

And by section 511, page 151, Hall's Mexican Law, this grant is declared "to serve as a title."

Therefore the conclusion is logical and necessary that prior to the expiration of six years from the date of the grant the Mexican Government could not have set up any claim or title whatever to these lands as against Royuela and Beales.

If we are correct as to that conclusion then it would seem that this Court is bound by its own decision in *United States* v. *Sutherland*, 19 How., 363, wherein it was adjudged that "The United States "is bound by treaty with Mexico to protect all *bona* "*fide* titles previously granted by Mexico, and this "Court has no discretion to enlarge or curtail such "grants to suit its own sense of propriety nor defeat "just claims, however extensive, by stringent tech- "nical rules of construction, to which they were "were not orignally subjected."

If this Court meant anything by the use of such language, it intended to say that this government and all others as to real estate embraced in the Texas Cession, are subrogated to such rights [and only such rights] as the Mexican Government could have claimed.

This is also apparent from what this Court has said in *United States* v. *Auguisola*, 1 Wall., 352, wherein this Court declares its purpose to enforce all claims to lands that would have been held good by the Mexican Government at the date of the treaty of Guadalupe-Hidalgo.

And how could it be otherwise when it is remembered that the protocol in the treaty provides that: "These grants notwithstanding the sup-"pression of the tenth article of the Treaty pre-"served the legal value which they may possess, "and the grantees may cause their legitimate titles "to be acknowledged before the American tribu-"nals. Conformably to the law of the United "States, legitimate titles to every description of "property, personal and real, existing in the ceded "Territory are those which were legitimate titles "under the Mexican law in California and New "Mexico up to the 13th of May, 1846, and in Texas "up to the 2d of March, 1836."

As has been before said by this Court the Mexican law is the governing rule with reference to these grants.

The grant in this case emanated from Coahuila-

Texas. Coahuila-Texas constituted a State under the Mexican Government. By the law of that Government, as admitted by demurrant, Coahuila-Texas had the jurisdiction to make the grant to Royuela and Beales. That jurisdiction is also recognized by the Government of the United States in the act of our Government whereby on the 25th of November, 1850, the Texas cession of the Territory involved in this suit was received by the General Government.

Royuela and Beales had by the express terms of the grant to them the full six years from the 14th of March, 1832, to-wit: until the 14th of March, 1838, to perform the CONDITIONS SUBSEQUENT appertaining to the introduction of the 200 families named in the conditions of the grant.

But Texas by its own voluntary act [the obligated party] long prior to the time when Royuela and Beales were required by the terms of said grant to introduce these families, engaged in flagrant war of rebellion against Mexico, which resulted on the 22d of April, 1836, in the perfect independence of Texas, "the obligated party," and thereby the allegiance which Texas had formerly owed to Mexico was annihilated. In this state of the case how was it possible for Royuela and Beales to perform the conditions upon which this Grant was made, which is in language as follows, to-wit: "Besides the "conditions which are required by the colonization "law of the State, the EMPRESARIOS and their set-

"tlers agree to observe the Constitution of the "Mexican Nation, and the private Constitution of "the State, as well as the general or local laws "which have been or shall be hereafter promulgated. "They further bind themselves to comply with the "conditions on which this petition shall be granted, "and to take up arms in defence of the rights of "the Nation, against the savage Indians, or any "other enemies who may attempt to attack the "country, or in any manner to alter its form of "government or disturb the public tranquility.

"And finally to prevent the inhabitants of the "United States of North America from trading "with the said Indians and providing them with "arms and ammunitions, in exchange for horses "and mules.

"Observe the Constitution of the Mexican gov- "ernment, the private Constitution of the State, "the general and the local laws, and especially "take up arms in defense of the rights of the Mex- "ican Nation, and do no act to alter the form of "the Mexican Government or to disturb its public "tranquility."

History tells the story too plainly as to how Texas (the obligated party) not only prevented the performance of this chief of all conditions in the grant, but we also read how the rebellion and successful revolution marked the decadence and destruction of Mexican power.

In view of this provision of Mexican EMPRESA-

RIO law and these matters of public history, can it be consistently urged by the Maxwell Land Grant Company (who confess that they have neither title nor possession of these lands) that Royuela and Beales did not perform the conditions of the grant made by Jose Maria de Letona.

The government of the United States itself could certainly not be heard upon such a proposition. It would be estopped by virtue of the treaty of Guadalupe-Hidalgo, the Texas Cession of November 25, 1850, and the Texas annexation of 1845.

In the *United States* v. *Vaca*, 18 How., 556, this Court by reason of these considerations, expressly decided that the failure to perform CONDITIONS SUBSEQUENT in Mexican land grants, resulting from the revolutionary state of the country, had no tendency to work a forfeiture of the title.

And in the case wherein title was derived from a Mexican military officer to lands, the title to which was contingent upon loyalty and military services to be rendered by him to the Mexican Government; and he, after it appeared that by reason of the revolutionary condition of the country, Mexican authority would be displaced on this side of the Rio Grande, thereupon deserted the Mexican Government, to which his allegiance was due, and joined the military force of the United States (then at war with Mexico), this Court held that the United States could not be heard upon the suggestion that these facts operated as a forfeiture of the grant.

A great deal more might be said concerning this interesting subject, but we do not feel that any necessity exists for further occupying the attention of the Court, inasmuch as the foregoing quotations from Mexican colonization law, the treaty of Guadalupe Hidalgo, and adjudications of this Court thereon, must estop the demurrant.

WILLIAM WARNER,
JOHN L. JEROME,
ALEXANDER GRAVES,
Counsel for Appellant.

Office Supreme Court, U.S.
FILED.
MAR 9 1891
JAMES H. McKENNEY,
CLERK.

CASE NO. 1267. ADDITIONAL BRIEF VII AND VIII.

IN THE

Supreme Court of the United States

OTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,
vs.
THE MAXWELL LAND GRANT CO.,
Respondent.

Additional Brief and Argument for Appellant.

WILLIAM WARNER,
JOHN L. JEROME,
ALEXANDER GRAVES,
Attorneys for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1890.

THE INTER-STATE LAND COMP'Y,
Appellant,

vs.

THE MAXWELL LAND GRANT CO.,
Respondent.

Additional Brief VII and VIII for Appellant.

ADDENDA.

In addition to what has been urged in the brief for appellant, the followiing additional points and authorities are submitted, to wit:

VII.

The land involved in this suit is situated in Las County, Colorado, and hence the statute of that State, which authorizes this suit and the decisions of this Court applicable thereto, must be considered as considered as complete authority, by virtue of which the judgment sustaining the demurrer should be reversed. It is not hereby contended that the legislative act of a State can in any respect diminish the chancery powers of this Court, but appellant submits that if an equitable right concerning real estate is created by such statutory provision, and the mode of enforcing that equitable right is pointed out by the statute, then the Federal Chancery Court will enforce that right acccordiog to the mode prescribed.

An act of the Legislature of Colorado, approved April 7th, 1887, entitled "An act to provide a code of procedure in civil actions for courts of record in the State of Colorado, and to repeal all acts inconsistent therewith" (Sessions Acts 1887, pp. 97–210),

expressly authorizes this suit, *provided* the Inter-State Land Company is in possession of the land by its tenants.

Chap XXII. § 255 of said Civil Code is as follows:

"An action may be brought by *any person in possession*, by himself or his tenant, of real property, against any person who claims an estate therein adverse to him, for the purpose of *determining* such adverse claim, estate or interest."

This statute creates the right to appeal to the chancery power of the court to determine the adverse claim upon the single condition that the Inter State Land Company is in possession of the land involved herein, and, as will hereinafter be shown, this court will enforce this right precisely as would the State court of Colorada, if the suit were pending in the State court.

The said Civil Code provides for all civil actions of every description whether legal or equitable, as will be seen by its provisions.

The first section declares that "the distinction between actions at law and suits in equity and the distinct forms of actions and suits heretofore existing are abolished, and there shall be in this State but one form of civil action for the enforcement or protection of private rights * * * which shall be the same at law and in equity, and which shall be denominated a civil action, and which shall be prosecuted and defended as prescribed in this act."

Sessions Acts, 1887, p. 97, Chap. I § 1.

The Supreme Court of Colorado has recently construed this law so far as it affects the point now made, and therefore it is made plain that the statute means literally what it says, namely: That the *mere possession* of the Inter-State Land Company gives it the right to bring this suit against the Maxwell Land Grant Company.

In the case of *Thomas* vs. *Chisolm*, 13 Col., Rep. 106, the Court held that both parties in a proceeding under the foregoing statute were actors, "and a defendant cannot rely upon the weakness of the plaintiff's title, as in ordinary ejectment cases."

But in points II, III and IV of the original brief, we claim that it is proved that as against the Inter-State Land Company, the defendant has no title whatever. And this being an action to enforce an equity (as decided in the case of *Stock Growers' Bank* vs. *Newton*, 13 Col., Rep. 249,) in favor of the Inter-State Land Company against the Maxwell Land Grant Company, which last named company confesses on the record the possession of the Inter-State Land Company, under the above statute of Colorado, this Court will enforce that equity precisely as would the State Court.

In *Clark* vs. *Smith*, 13 Pet., 203, this Court said:

"The State Legislatures certainly have no authority to prescribe the forms and modes of the United States; but having created a right and at the same time prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary mode of proceedings on the chancery side of the federal courts, no reason exists why it should not be pursued in the same form as it is in the State Courts; on the contrary, propriety and convenience require that the practice should not materially differ where the title to lands are the subjects of investigation. And such is the constant course of the federal courts. * * * We must accommodate our modes of proceeding in considerable degree to the nature of the case and the character of the equities involved in the controversy so as to give effect to State legislation and State policy."

In *Smith* vs. *Railroad Co.*, 9 Otto 401, this court court said:

"The States, however, may create equitable rights which those (the federal) courts will enforce."

And directly in joint is *Gaines* vs. *Fuentes et al.*, 92 U. S., 21.

VIII.

Besides the provisions of the said stature, this court has full jurisdiction as a court of chancery to administer the relief sought for.

Consolidated Roller Mills Co. vs. *Combs*, 39 Fed. Rep. 38.

Rynes vs. *Dumont*, 9 Sup. Ct. Rep., 497 and Ca. cit.

This court will exercise this jurisdiction for the purpose of preventing a multiplicity of actions at law.

Garrison vs. *Memphis Ins. Co.*, 1 Miller 716.
Olrichs vs. *Spain*, 15 Wall., 228.
Conklin vs. *Wherman*, 38 Fed. Rep., 877.

The allegations of the bill are confessed.

St Louis vs. *Knapp Co.*, U. S. Rep. 158.
U. S. vs. *Am. Bell Telephone Co.*, 9 Sup. Ct. Rep. 93.

We respectfully submit that the court should reverse the judgment of the Circuit Court rendered upon sustaining the demurrer to the amended bill.

WILLIAM WARNER,
JOHN L. JEROME,
ALEXANDER GRAVES,
Solicitors for Appellant.

Office Supreme Court, U. S.
FILED,
FEB 21 1891
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

THE INTERSTATE LAND COMPANY,
Appellant,
vs.
THE MAXWELL LAND GRANT COMPANY,
Appellee.

No. 1,267.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR APPELLEE.

FRANK SPRINGER,
Counsel for Appellee.

C. G. Burgoyne, 146-150 Centre Street, New York.

"The States, however, may create equitable rights which those (the federal) courts will enforce."

And directly in joint. is *Gaines* vs. *Fuentes et al.*, 92 U. S., 21.

VIII.

Besides the provisions of the said stature, this court has full jurisdiction as a court of chancery to administer the relief sought for.

Consolidated Roller Mills Co. vs. *Combs*, 39 Fed. Rep. 38.

Rynes vs. *Dumont*, 9 Sup. Ct. Rep., 497 and Ca. cit.

This court will exercise this jurisdiction for the purpose of preventing a multiplicity of actions at law.

Garrison vs. *Memphis Ins. Co.*, 1 Miller 716.
Olrichs vs. *Spain*, 15 Wall., 228.
Conklin vs. *Wherman*, 38 Fed. Rep., 877.

The allegations of the bill are confessed.

St Louis vs. *Knapp Co.*, U. S. Rep. 158.
U. S. vs. *Am. Bell Telephone Co.*, 9 Sup. Ct. Rep. 93.

We respectfully submit that the court should reverse the judgment of the Circuit Court rendered upon sustaining the demurrer to the amended bill.

WILLIAM WARNER,
JOHN L. JEROME,
ALEXANDER GRAVES,
Solicitors for Appellant.

Office Supreme Court U. S.
FILED,
FEB 21 1891
JAMES H. MCKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

THE INTERSTATE LAND COMPANY,
Appellant,
vs.
THE MAXWELL LAND GRANT COMPANY,
Appellee.

No. 1,267.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR APPELLEE.

FRANK SPRINGER,
Counsel for Appellee.

C. G. Burgoyne, 146-150 Centre Street, New York.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1890.

THE INTERSTATE LAND COMPANY,
Appellant,

vs.

THE MAXWELL LAND GRANT COMPANY,
Appellee.

BRIEF FOR APPELLEE.

Statement.

This is a suit in equity, brought in the Circuit Court for Colorado, by the Interstate Land Company against the Maxwell Land Grant Company, seeking to have the title of the last-named company to certain lands in the State of Colorado decreed to be void, and the Maxwell Company enjoined from prosecuting certain actions at law for the possession of them; and also praying that the Interstate Land Company may be decreed to have the legal title to said lands. The documents upon which the respective claims of title are based are fully set out in the bill, or made part of it by means of exhib-

its attached thereto. The bill was demurred to, and the demurrer sustained, on the ground that the documents exhibited failed to show any title in complainant. After an amendment, another demurrer was interposed and sustained, and thereupon the bill was dismissed. From this decree the Interstate Land Company appealed to this Court.

Complainant claims title under an *empresario* contract, made March 14, 1832, by one John Charles Beales with the Government of Coahuila and Texas, then two Mexican States under one provincial administration. The terms and conditions of this contract, and the rights of the *empresario* thereunder, are to be ascertained from four instruments and laws, viz.:

1. The proposal of Beales and Royuela to colonize 200 families.

2. The contract by which the Government accepts their proposal, and authorizes the establishment of their colony.

3. The Colonization Law of Coahuila and Texas, of March 24, 1825, which is expressly referred to in both the foregoing papers, and made part of the contract.

4. The instructions to commissioners for locating and regulating colonies under the above-mentioned law, which are also referred to in the contract.

We will quote the proposal and the contract in full, and such parts of the law and instructions as bear upon this question, italicizing certain passages to which we desire to direct especial attention.

Petition and grants to Jose Manuel Royuela and John Charles Beales.

For the year 1832 and 1833.

To his Excellency the Governor of the State of Coahuila and Texas. Sir: The citizen Jose Manuel

Royuela, a native of Saltillo, and there married, and John Charles Beales, a native of England, settled in Mexico, and there married to a Mexican subject, having children, with all due respect represent to your excellency :

That being very desirous of augmenting the population, wealth and power of the Mexican nation, and at the same time of affording to a certain number of virtuous and industrious families the means of acquiring an honorable subsistence by cultivating a tract of land in the ancient province of Texas, *and being, moreover, acquainted in full with the law of colonization passed by the honorable Legislature of this State, on the 24th of March, 1825, by which "empresarios" or colonizing contractors are allowed to undertake to colonize under the conditions and stipulations by said law prescribed*, and being anxious to form an establishment that may be useful to a new colony, and at the same time beneficial to the State on account of the advantages to accrue thereout:

We pray your excellency to accept us as such "empresarios" or *colonizing contractors*, and to permit us to introduce into this State, within the time that may be stipulated, 200 Catholic families of moral and industrious habits, and for the object your excellency will be pleased to grant us the tract of land included within the following limits, viz. :

Beginning at a landmark set up on a spot whereat the 32d degree of north latitude is crossed by the meridian of the 102d degree of longitude west from London, said spot being at the southwest corner of the grant petitioned by Col. Reuben Ross ; from thence proceeding west along the parallel of the 32d degree of latitude as far as the eastern boundary of New Mexico ; from thence running north on the boundary line between the provinces of Coahuila and Texas and New Mexico, as far as twenty leagues of the river Arkansas ; from thence east to the meridian of the 102d degree of longitude, which is the western boundary of the grant petitioned for by said Col. Reuben Ross, and from thence proceeding south as far as the place of beginning.

Your petitioners as "empresarios" pray for this grant *on the same conditions that it was formerly given to the late Stephen Julian Wilson*, whose term of six

years is about to expire, on May 26 of this year, without the conditions of the grant having been fulfilled in consequence of the grantee.

Besides the conditions which are required by the Colonization Law of the State, the empresarios and their settlers agree to observe the Constitution of the Mexican nation, and the private Constitution of this State, as well as the general and local laws that have been or shall be hereafter promulgated. They further bind themselves to comply with the condition on which this petition is granted and to take up arms in defense of the rights of the nation against the savage Indians, or any other enemies that may attack the country, or in any manner to alter its form of government, or to disturb the public tranquillity. And finally to prevent the inhabitants of the United States of North America from trading with the said Indians and providing them with arms and ammunition in exchange for horses and mules.

Wherefore, we pray your excellency to be pleased to grant this respectful petition, which we shall consider as a favor conferred on us.

Dated at Saltillo, the 13th of March, 1832.

[Signed] JOSE MANUEL ROYUELA,
JOHN CHARLES BEALES.

(Rec., pp. 24, 25.)

CONDITIONS OF THE GRANT.

Terms on which the Supreme Government of the State accept the proposal of the citizens Jose Manuel Royuela and John Charles Beales, for colonizing certain land with 200 foreign families such as are not excepted by the law of the 6th of April, 1830:

Article 1. The Government accepts the proposal made in the foregoing petition, *as far as it is conformable with the laws of colonization passed by the Honorable Congress of the State on the 24th of March, 1825*, and consequently *assigns to the petitioners* the tract of land included within the following limits, *that they may establish thereon the proposed colony:* It shall begin at a landmark which shall be set upon the spot where the parallel of the 32d degree of north latitude crosses the meridian of the 102d degree of longitude west from

London, said spot being at the southwest corner of the grant petitioned for by Col. Reuben Ross; from thence it shall proceed along the parallel of the 32d degree of latitude as far as the eastern limit of New Mexico; from thence it shall ascend north on the boundary line between the province of Coahuila and Texas and New Mexico as far as twenty leagues of the River Arkansas. From thence it shall run east to the meridian of the 102d degree of longitude, which is the western boundary of the grant petitioned for by the said Col. Reuben Ross; and from thence it shall proceed south as far as the place of beginning.

Art. 2. Though the boundaries of the tract set forth in the preceding clause *are those assigned to Stephen Julian Wilson, in a grant passed by this Government on the 27th of May, 1826*, yet this circumstance has not been considered an impediment to the entering into the present contract, inasmuch as the time allotted to the said Wilson for the completion of said enterprise will expire in the month of May of this present year, without his having to this day performed the same or any part whatsoever. But if, however, in the short time that has to elapse, any number of the families of that empresario should present themselves, then, and in that case, the present grant shall, with due respect to part or parts performed by the first grantee thereof, be null and void to all intents and purposes.

Art. 3. In consideration of the grant hereinbefore specified, *the empresarios, or contracting parties*, agree to introduce and settle, on their own account, 200 foreign families, conforming themselves as well to the General Law of the Republic as to the laws of the State in this behalf provided.

Art. 4. All lands whatsoever, held under legal titles, that may be included within the limits designated in Article 1, shall be respected by the colonists who shall hold *under this contract*, and it shall be obligatory on the part of the empresarios to see the observance of this clause.

Art. 5. *The State retains to itself the right of property over all the surplus lands which shall remain of this grant, after laying off those which belong to the empresarios and their settlers, according to the laws in that behalf provided.*

Art. 6. In conformity with Article 8 of the Law of Colonization hereinbefore referred to, the empresarios are bound to introduce the stipulated number of 200 families within the term of six years, which shall be computed from the date hereof, under the penalty of being debarred from all the privileges and advantages afforded by the said law.

Art. 7. It shall be obligatory on the empresarios not to introduce or suffer to remain in the colony men guilty of atrocious crimes or of bad conduct, as also to endeavor that no person whatsoever shall carry on traffic in arms and ammunition with the barbarous tribes of Indians, in exchange for horses and mules.

Art. 8. Whenever there shall be a sufficient number of men, the national militia shall be duly organized and regulated, according to the laws of the State in that respect provided.

Art. 9. The colony shall be regulated by *the person whom this Government shall appoint to allot the respective settlements or possessions, and he shall duly observe the laws on colonization in force throughout the State, the General Law of the 18th of August, 1824, and likewise the instructions to Commissioners which have been appointed by the Honorable Congress*, taking care to afford protection within the limits of the colony to such persons only as shall be approved of by the empresarios.

Art. 10. All official communications, instruments and other public documents emanating from the colony must be written in the Spanish language.

Art. 11. In reference to all matters not provided for or expressed in these articles, the empresarios, or the new settlers holding under them, shall abide and be governed by the Federal Constitution and the laws of this State.

And his Excellency, the Governor of the State, and also the citizens Jose Manuel Royuela and John Charles Beales, having agreed in the articles *of this contract to grant*, and bound respectively to the observance and performance thereof, afterwards signed the same before me, the undersigned Secretary of the Government.

And having been directed to give the empresarios the certified copy of all the documents relating to the grant, that they may serve them as security, and as formal title (or as a title in form) thereto, the originals

will, according to law, remain filed and recorded in the Secretary's office under my charge.

Dated City of Leona Vicario, the 14th day of March, 1832.

(Signed) JOSE MARIA DE LETONA,
JOHN CHARLES BEALES,
JOSE MANUEL ROYUELA.

SANTIAGO DEL VALLE,
Secretary.

The foregoing is copied from the original documents filed and recorded in the Secretary's office, under my charge, whence it was ordered taken by his Excellency the Governor.

City of Leona Vicario, the 14th of March, 1832.

(Signed) SANTIAGO DEL VALLE,
Secretary.

(Rec., pp. 26–28.)

Colonization Law of the State of Coahuila and Texas, of March 24th, 1825.

(Rockwell's Spanish and Mexican Law, p. 641.)

The Governor provisionally appointed by the Sovereign Congress of this State to all who shall see these presents, know that the said Congress have decreed:

DECREE NO. 16. The Constituent Congress of the free, independent and sovereign State of Coahuila and Texas, desiring, by every possible means, to augment the population of its territory, promote the cultivation of its fertile lands, the raising and multiplication of stock, and the progress of the arts and commerce, and being governed by the constitutional act, the Federal Constitution and the basis established by the National decree of the General Congress (No. 72) have thought proper to decree the following law of colonization.

(Articles 1 to 7 refer simply to the admission and rights of foreigners.)

ART. 8. The projects for new settlements, in which one or more persons offer to bring at their expense one hundred or more families, shall be presented to the

Government, and if found conformable with this law they will be admitted; and the Government will immediately *designate to the contractors the land where they are to establish themselves*, and the term of six years, within which they must present the number of families they contracted for, under the penalty of losing the rights and privileges offered in their favor, in proportion to the number of families which they fail to introduce, *and the contract totally annulled if they do not bring at least one hundred families.*

ART. 9. Contracts made by the contractors or undertakers *(empresarios)* with the families brought at their expense are guaranteed by this law, so far as they are conformable with its provisions.

ART. 10. In the distribution of lands a preference shall be given to the military entitled to them, by the diplomas issued by the supreme executive power, and to Mexican citizens who are not military, among whom there shall be no other distinction than that founded on their individual merit or services performed for the country, or in equal circumstances, a residence in the place where the land may be situated. *The quantity of land which may be granted is designated in the following articles.*

ART. 11. A square of land, which on one side has one league or five thousand varas, or, what is the same thing, a superficie of twenty-five million varas, shall be called a *sitio*, and this shall be the unity for counting one, two or more *sitios;* and also the unity for counting one, two or more *labors* shall be one million square varas, or one thousand on each side, which shall compose a *labor*. The varas for this measurement shall be three geometrical feet.

(Taking the vara to be in this case three English feet, this would make a *sitio*=5,165 acres, and a *labor*=206 acres, which is more than is usually allowed).

Art. 12. *Taking the above unity as a basis*, and observing the distinction which must be made between grazing land, or that which is proper for raising of stock and farming land, without the facility of irrigation; *this law grants to the contractor or contractors for the establishment of a new settlement, for each hundred families which he may introduce and establish in the State,*

five sitios of grazing land and five labors, at least the one-half of which shall be without the facility of irrigation; *but they can only receive this premium for eight hundred families, although a greater number should be introduced*, AND NO FRACTION WHATEVER LESS THAN ONE HUNDRED SHALL ENTITLE THEM TO ANY PREMIUM, NOT EVEN PROPORTIONALLY.

(Five *sitios* and five *labors*, according to the rule given in Article II., would make 26,855 acres. So if Beales introduced 200 families he would be entitled to 53,710 acres as a premium, and no more; and unless he introduced at least 100 families he could receive no land at all).

Art. 13. Should any contractor or contractors *in virtue of the number of families which he may have introduced*, acquire, in conformity with the last article, more than eleven square leagues of land, it shall nevertheless be granted, but subject to the condition of alienating the excess within twelve years, and if it is not done the respective political authority shall do it by selling it at public sale, delivering the proceeds to the owners after deducting the costs of sale.

Art. 14. To each family comprehended in a contract, whose sole occupation is cultivation of land, one labor shall be given; should he also be a stock raiser, grazing land shall be added to complete a sitio, and should his only occupation be raising of stock, he shall only receive a superficie of grazing land equal to twenty-four million square varas.

(The most favored families, *i. e.*, those who combined agriculture with stock raising, could receive a *sitio*—5,165 acres. If the whole 200 families had been introduced and had been of this class, it would have required 1,033,000 acres of land to supply them. But this would not have been the property of Beales, but of the colonists in severalty; and complainant does not claim under any colonist).

The remaining articles refer to other matters.

Instructions to the Commissioners appointed by the Legislature of the State.

(Rockwell's Spanish and Mexican Law, p. 641.)

EXECUTIVE DEPARTMENT
of the State of Coahuila and Texas.

Instructions by which the Commissioner shall be governed, in the partition of lands to the new colonists, who may establish themselves in the State, in conformity with the colonization law of the 24th of March, 1825:

Art. 1. It shall be the duty of the Commissioner, keeping in view the contract which an empresario may have entered into with the Government, and also the certificates or recommendations which foreign emigrants must produce from the local authorities of the place where they removed from, accrediting their Christianity, morality and steady habits in conformity with the 5th article of said law, without which requisite they shall not be admitted to the colony.

Art. 2. In order to prevent being imposed on by false recommendations, the Commissioner shall not consider any as sufficient without a previous opinion in writing as to their legitimacy from the empresario, for which purpose they shall be passed to him by the Commissioner.

Art. 3. The Commissioner shall administer to each of the new colonists the oath in form to observe the Federal Constitution of the United Mexican States, the Constitution of the State, the general laws of the nation and those of the State which they have adopted for their country.

Art. 4. He shall issue, in the name of the State, the titles for land, in conformity with the law, and put the new colonists in possession of their lands, with all legal formalities, and the previous citation of adjoining proprietors, should there be any.

Art. 5. He shall not give possession to colonists who may have established, or may wish to establish, themselves within twenty leagues of the United States of the North or within ten leagues of the coast, unless it should appear that the Supreme Government of the nation had approved thereof.

Art. 6. He shall take care that no vacant lands be left between possessions, and in order that the lines of each one may be clearly designated, he shall compel the colonists, within the term of one year, to mark their lines, and to establish fixed and permanent corners.

Art. 7. He shall appoint under his own responsibility the surveyor, who must survey the land scientifically, requiring him previously to take an oath truly and faithfully to discharge the duties of his office.

Art. 8. He shall form a manuscript book of paper of the 3d stamp, in which shall be written the titles of the lands distributed to the colonists, specifying the names, the boundaries and other requisites and legal circumstances; and a certified copy of each title shall be taken from said book on paper of the 2d stamp, which shall be delivered to the interested person as his title.

Art. 9. Each settler shall pay the value of the stamp paper used in issuing his title both for the original and copy.

Art. 10. This book shall be preserved in the archives of the new colony, and an exact form of it shall be transmitted to the Government, specifying the number of colonists, with their names and the quantity of land granted to each one, distinguishing that which is farming land, with or without the facilities of irrigation, and that which is granted as grazing land.

(The remaining articles refer chiefly to the regulation of towns.)

It is not alleged in the bill that Beales and his associate ever performed the conditions of their contract. But in the amendment (Rec. p. 50) it is said that Beales "was placed in the actual possession of said land by the proper Mexican authorities," and "that said government in sundry and divers ways * * * by its official acts recognized that the fee in said lands passed by said grant to said Royuela and Beales." It then gives the "official act" relied on, in the shape of a complimentary letter from the President of the Mexican Republic to Beales, which states that an order has been issued to the army of operation "to afford protection to the colonial establishments of yourself and

Senor Egerton." There is not a word to show that it referred to this land; and it is a matter of history, brought to the attention of this Court in the case of *Gonzales vs. Ross*, 120 U. S., 605, that Beales had other *empresario* contracts, under which some settlements were attempted to be made. In any event this letter does not purport to give Beales anything more than his contract called for.

The amendment further states "that the Mexican Government, in pursuance of said order, did at all times maintain and protect the possession and title of the said Royuela and Beales to the said lands, &c." And also,

"That in addition to having taken actual possession "of the lands embraced in said grant, and having "sectionized a large part thereof, the said Beales, in "further performance of the condition of said grant, "had introduced a portion of the families, as required "by its terms, and would have introduced all the "families of the class described therein and would have "performed all the conditions of the said grant, had he "not been wholly prevented in such performance by "the said revolution of Texas, which resulted in its "independence of Mexican authority."

All this lacks the certainty which is necessary in a bill to establish title and enjoin proceedings at law.

It is idle to allege a putting or maintaining in possession, without setting out the acts themselves with sufficient particularity to enable the Court to determine whether they were in conformity with the contract and the law. If it is meant to say that the title and possession so recognized and maintained covered the entire tract designated, then the bill avers a legal impossibility, since neither the contract nor the law permitted this. If it means the lands earned by virtue of the introduction of "a portion of the families," then what was the quantity, and where was it located? How many families were introduced? If there were not at least 100, then the *empresario* got no premium land at all.

This is all we are informed about this transaction by the bill as amended. It does not appear that 100, or any, colonists were ever actually settled within the limits of the tract designated, or that any land was ever allotted by a commissioner, either to the colonists or to the *empresarios*, for premium land; or that they were put in possession by the commissioner, or received any title of possession. Yet this was the only way in which possession by either could be lawfully taken, and the final title, or certificate of possession, was the only lawful evidence of it.

Royuela's interest was assigned to Beales, who lived until 1879. It does not appear that he ever took any steps to obtain a recognition or confirmation of his claim, either by Texas or the United States. Texas did not, as appellant contends, repudiate the partially performed *empresario* contracts, or assume to interfere with vested rights. But, on the contrary, one of her first acts, after achieving independence, was to pass a law by which all colonists who had been brought over under *empresario* contracts prior to the Revolution, and all *empresarios* who had in any measure performed their contracts, might bring an action against the President of the new Republic and get their titles by judicial decree. The whole policy of Texas in relation to these *empresario* contracts, and the procedure under the law above mentioned, are treated in a very able manner in the early case of *Houston vs. Robinson*, 2 Texas, 16. It does not appear that Beales ever sought to avail himself of the privileges thus offered by Texas.

The greater part of the claim, as now contended for, including all that portion covered by the Maxwell Company's grant, is within the territorial limits of New Mexico as they existed in 1854, when Congress invested the Surveyor-General of that Territory with jurisdiction to investigate all private land claims arising under the former governments, and report them for the action of Congress. But it does not appear

that the Beales claim was ever presented to that officer for investigation; whereas the bill does aver that such proceedings were duly taken with regard to the grant under which the defendant asserts the claim, which it is the object of this suit to have decreed void, (Rec., p. 3).

In regard to the latter grant, the bill sets forth its history, and appends the documents evidencing the grant, by which it is shown that in 1841 the Governor of New Mexico made a grant to Beaubien and Miranda, which included the lands in controversy in this suit; that this grant was confirmed by the Congress of the United States in 1860 and patented in 1879; that the defendant, the Maxwell Land Grant Company, claims under such grant, and is sueing some of complainant's tenants in ejectment. It might have added that the validity of this grant and patent was attacked by the Government in a direct proceeding, and litigated to a final decision by this Court, in which both were held to be valid.

Maxwell Land Grant Case, 121 U. S., 365.

But the bill then proceeds to allege that the grant to Beaubien and Miranda was void, because by reason of a Mexican law of 1837, for the creation of a national mortgage or land scrip, the authority for making such a grant was abrogated. The law itself is set out, and shows on its face that the colonization laws were only repealed "so far as they are contrary to this law." And as it does not appear that any of the land scrip contemplated by the law was ever issued, or that there was in any other way a conflict between it and the colonization laws, it is difficult to see how an act done under the latter would be void. Still less can it be comprehended how a private person can be heard to say that a grant by the former Government was without authority, after it has been declared valid by the legislative, executive and judicial departments of this Gov-

ernment. He could, of course, question its validity as against him, upon the single ground that he had a superior title under Mexico. If Beales, by reason of the contract relied upon, obtained, as the bill says, the "title in fee" to the entire tract described in it, including the lands of the Beaubien and Miranda grant, nobody denies that such a title would prevail over any subsequent grant of the same lands. But this simply leads back to the fundamental question, whether Beales in fact got such a title. Unless he did, complainant has no standing to question the title of the Maxwell Company or any one else; and it is idle to discuss theories about a title, which is as perfect as the combined action of the Governments of Mexico and the United States can make it.

The bill refers to the *proviso* in the Act of Congress confirming the Beaubien and Miranda grant that the confirmation "shall not affect the adverse rights of any person or persons whatsoever." And counsel for appellant in their brief seem to attach much importance to it. But it amounts to nothing more than the principle already stated, viz., that the action of the United States confirming a grant by the former Government to one person, does not preclude any other person from asserting a superior title emanating from the same original source. This is well understood, and has been frequently decided under a similar clause in the California cases.

In *Carpentier vs. Montgomery*, 13 Wall., 495, this Court held that this provision

"was intended to save the rights of third persons, not "parties to the proceeding, who might have Spanish "or Mexican claims independent of, or superior to, "that presented by the claimant, or the equitable rights "of other parties having rightful claims under the title "confirmed."

See also

Manning vs. San Jacinto Tin Co., 7 Sawyer, 418, where the authorities are collated; and

Miller vs. Dale, 44 Calif., 565.

The tract of land claimed by the Interstate Land Company under the Beales contract apparently embraces all of New Mexico east of the Rio Grande, and a portion of what is now Southern Colorado, in addition to a strip of equal length extending about sixty miles into Texas and the so-called Neutral Strip. The western boundary, as described, is "the eastern limit of New Mexico." After the revolution, Texas claimed the country as far west as the Rio Grande, from mouth to source; and upon that theory New Mexico proper was only to be found west of the river.* The present claim seems to be in line with that theory, since if the recognized boundary of New Mexico be taken, the Maxwell grant, as described in the bill, would not be within seventy miles of the Beales tract at the nearest point.

In order to give an intelligent idea of the location and extent of the claim, we have made a small map, which will be found at the end of this brief. Roughly calculated, the area of the Beales tract, as claimed, is something over sixty millions of acres.

---

* That this claim was without foundation see Letter of the Secretary of State, showing that New Mexico never was a part of Texas. Ex. Doc. 60, Senate, 30th Cong., 2d Session, pp. 38-39. Also the intimation of this Court in Gonzales vs. Ross, 120 U. S., 605.

Argument.

The statement is made at various places in the brief filed by appellant that it is admitted by the demurrer "that the title in fee of the land involved in this suit passed to Royuela and Beales by virtue of the grant made to them, as set forth in the bill of complaint;" and also "that the respondent never has had any title or claim of title to the premises herein involved." (See pp. 2, 14, 64 and elsewhere). From the persistency with which this is repeated as concluding the main debatable questions in the case, it might be supposed that counsel were unfamiliar with the elementary rule of pleading that a demurrer admits only such statements of fact as are well pleaded, but does not admit conclusions of law.

This has been often laid down by this court as applicable to cases like this, where the instruments relied upon to establish a right are set forth in the record, and the controversy turns upon the legal effect of those instruments. In such cases, the very office of a demurrer is to submit the questions arising on the face of the instruments for determination as matter of law.

"A demurrer admits facts well pleaded; it does not "admit matters of inference and argument however "clearly stated; it does not admit, for example, the "accuracy of an alleged construction of an instrument, "when the instrument itself is set forth in the bill, or a "copy is annexed, against a construction required by "its terms; nor the correctness of the ascription of a "purpose to the parties when not justified by the "language used."

Dillon vs. Barnard, 21 Wall., at page 437.

"Matters of fact well pleaded are admitted by a de- "murrer, but it is equally well settled that mere con- "clusions of law are not admitted by such a proceed- "ing. *Dillon vs. Barnard*, 21 Wall., 430; *Ford vs. Peer- "ing*, 1 Ves. Ch., 71; *Lea vs. Robeson*, 12 Gray, (Mass.),

" 280 ; *Redmond vs. Dickerson*, 1 Stockt., (N. J.), 507 ;
" *Murray vs. Clarendon*, Law Rep., 9 Eq., 17; *Nesbitt vs.*
" *Berridge*, 8 Law Times, N. S., 76 ; *Story Eq. Plead.*
" (7th Ed.), Sec. 452.

" Facts well pleaded are admitted by a demurrer ; but
" it does not admit matters of inference or argument,
" nor does it admit the alleged construction of the
" instrument when the instrument itself is set forth in
" the record, in cases where the construction assumed
" is repugnant to its language. Authorities to that
" effect are numerous and decisive."

United States vs. Ames, 99 U. S., at page 45.

" A demurrer necessarily admits the truth of the facts
" stated in the bill, so far as they are relevant and are
" well pleaded ; but it does not admit the conclusions
" of law drawn therefrom, although they are also alleged
" in the bill."

Story's Equity Pleading (9th Ed.), Sec. 452.

Counsel quote at length from decisions of this Court holding that private rights of property were not affected by the cession of the country to the United States. Nobody disputes this. But the protection afforded by the treaty and the law of nations does not extend to the creation of new titles, or the enlargement of those already existing. Such as they were, they were supposed to be protected. But the treaty did not change an inchoate into a perfect title ; nor convert a mere equitable claim into a title in fee, so as to enable the claimant to sue upon it as such, without first having it confirmed or perfected under the proceedings prescribed by the political department of the Government. Still less does the treaty operate to transform an unlocated float of undetermined quantity, into an absolute grant for the whole district assigned for the float.

It is worth while noticing, as a part of the pertinent literature of the case, that this belongs to the one particu

lar class of claims which the United States, in negotiating the treaty of Guadalupe Hidalgo, expressly refused to recognize.

The original draft of the treaty of Guadalupe Hidalgo, as provisionally agreed upon between the Commissioners representing the United States and Mexico, contained the following article:

ARTICLE 10. All grants of land made by the Mexican Government, or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid to the same extent that the same grants would be valid if the said territories had remained within the limits of Mexico. But the grantees of land in Texas, put in possession thereof, who by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited within the same respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty; in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this article. The foregoing stipulation in regard to grantees of land in Texas is extended to all grantees of land in the territories aforesaid elsewhere than in Texas, put in possession under such grants; and in default of the fulfillment of the conditions of any such grant within the new period, which, as above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void. (Message of the President of the United States, transmitting papers relative to the treaty of Guadalupe Hildago, Feb. 8, 1849, Ex. Doc., 50, H. R. 30th Cong., 2d Session, p. 17).

This article was rejected by the United States Senate and stricken out (*Ibid.*, p. 32), and in the message of the President the reasons for the rejection of this article are stated as follows:

"The objection to the 10th article of the original "treaty was not that it protected legitimate titles, "which our laws would have equally protected "without it; but that it most unjustly attempted "to resuscitate grants which had become a mere nullity, by allowing the grantees the same "period after the exchange of the ratifica- "tions of the treaty, to which they had been "originally entitled after the date of their grants, for "the purpose of performing the conditions on which "they had been made. In submitting the treaty to "the Senate, I had recommended the rejection of this "article. That portion of it in regard to lands in "Texas did not receive a single vote in the Senate. "This information was communicated by the letter of "the Secretary of State to the Minister of Foreign "Affairs of Mexico, and was in possession of the Mexi- "can government during the whole period the treaty "was before the Mexican Congress, and the article "itself was reprobated in that letter in the strongest "terms. Besides, our commissioners to Mexico had "been instructed 'that neither the President nor the "Senate of the United States can ever consent to "ratify any treaty containing the 10th article of the "treaty of Guadalupe Hidalgo in favor of grantees of "land in Texas or elsewhere;' and again, 'should the "Mexican government persist in retaining this article, "then all prospect of immediate peace is ended; and "of this you may give them an absolute assurance.'"

The President then proceeds to explain that the Protocol, afterwards signed by the American commissioners, and upon which the treaty was ratified by Mexico, did not restore the 10th article in any sense, but was simply an explanation to the effect that the omission of that article "was not intended to destroy valid, legitimate titles to lands which existed and were in full force independently of the provisions and without the aid of this article. Notwithstanding it has been expunged from the treaty, these grants 'were to preserve the legal value which they may possess.' The refusal to revive grants which had become extinct was

not to invalidate those which were in full force and vigor."

Counsel also quote from certain decisions of this Court, touching the presumptions to be indulged in favor of the acts of officers of the former government. But these can have no possible application to a case where the act purports to be done under a particular law, by whose terms it is expressly limited, and where the law itself is before the Court.

Passing now to the papers constituting the Beales' claim, the contention of the Interstate Company is that they passed the title in fee at the date of their execution. It is not averred that any particular number of colonists were introduced, by which the quantity of premium land could be computed; nor that any premium land was allotted; or any title of possession extended to particular lands within the designated territory. The claim is not for premium land at all. But their theory is that the contract between Beales and the State of Coahuila-Texas operated as a present grant to Beales of all the land described, coupled with an undertaking on his part to perform certain acts, which undertaking was in the nature of a condition subsequent; that by reason of a war in which Texas engaged the performance of this condition became impossible; and that for this reason the grant was relieved of the condition, and the title became absolute. It is readily admitted that this would be the law upon a state of facts such as is assumed in the proposition. This Court has so decided in several cases of grants in Florida and California. But the fatal objection here is that the facts present no such case.

The most cursory reading of the papers relied on shows that they constituted a mere executory contract; and when taken in connection with the Colonization

Law of 1825, which is made a part of it, this contract is an exceedingly plain one.

Beales and Royuela proposed to the Government to settle 200 families "under the conditions and stipulations prescribed" by the law of 1825. In the instrument accepting this proposal, the Government "so far as conformable with the Law of Colonization" of 1825, "assigns to the petitioners the tract of land included within the following limits"—for what? Not as their property; but "*that they may establish thereon the proposed colony.*" Appellant's counsel lay much stress on the occasional use of the word "grant" in this document, but that is so clearly controlled by the context that it is unnecessary to discuss it. The words "contract," and "contracting parties," are used all through it, and in Article 11 the instrument is called "*this contract to grant.*" Counsel also argue that the clause in Article 11 providing for giving the empresarios "this certified copy of all the documents relating to the grant, that they may serve them as security and as formal title (or as a title in form) thereto," means the final title of possession, beyond which no further proceedings were necessary to the complete investiture of title. This, however, only refers to the copy as an instrument of evidence of its contents—the well known *testimonio* of the Mexican law, which had the force and effect of a second original—the original in all such cases being required by law to be retained among the public archives. That it was in no sense a final title, is shown by Article 9, which provides that "the person whom this Government shall appoint" shall "*allot the respective settlements or possessions,*" and by the provisions of the law and instructions to the commissioners for these colonies, that *they* should give the final titles.

How appellant's counsel reconcile their notion of a present grant in fee, with the fact that this identical tract had been formerly given to Stephen J. Wilson upon the same conditions as asked for by Beales, we

have never been able to find out. The petition of Beales and Royuela states this fact, and the contract recites that the boundaries "are those *assigned* to Stephen J. Wilson in *a grant passed by this Government* on the 27th of May, 1826." If a "grant" upon the "same conditions" did not pass the title in fee to Wilson, how could it do so to Beales? If the language of the contract is sufficient to establish a grant in fee to Beales, then the same language and the same conditions must have passed the title in fee to Wilson, and the Government would have been without power to give the land to Beales. If, however, the Government could give the land to Beales because Wilson had failed to perform the conditions, it would seem to follow that an identical arrangement with Beales would not divest the title of the Government, so as to prevent its giving some of the land to Beaubien and Miranda, after Beales' time had expired.

But, if there could be any doubt arising out of particular words in the contract, the whole matter would be settled by Article 5, which is:

"*The State retains to itself the right of property over "all the surplus lands which shall remain of this grant, "after laying off those which belong to the empresarios "and their settlers, according to the laws in that behalf "provided.*"

Now, the quantity of land which would "belong to the *empresarios* and their settlers according to the laws in that behalf provided" was a simple matter of arithmetic. Each family, if of the highest class, would receive 5,165 acres. But this did not become the property of the *empresario*, and may therefore be left out of consideration. For each 100 families the *empresarios* would receive 26,855 acres.

But before any land would belong to the *empresario*, so that its quality and location might be determined, there must be some families settled. And before they

could get any land at all for themselves, they must introduce at least 100 families. The last clause of Article 12 of the Colonization Law of 1825 expressly declares that "*no fraction whatever less than one hundred shall entitle them to any premiums, not even proportionally.*"

With this provision in the contract, it is a little difficult to see where the condition *subsequent* comes in.

The subject of these *empresario* contracts is not a new one to this Court. In *Spencer vs. Lapsley*, 20 How., at page 270, the Court had under consideration a grant made under the identical law of Coàhuila—Texas, of March 24th, 1825, under which the contract in question was made; and stated the requirements and effect of this law as follows:

"The contract of an *empresario* obliged him to "introduce colonists into a specific district. The "colonist having a family was entitled to one league "of land, of a particular quality, for which he paid a "small sum to the Government. The *empresario* was "paid five leagues and five labors for every one "hundred families introduced. Of course, the excess "of land within the limits of the colony, after supplying "the colonists and the *empresario*, remained to the "Government. The commissioner of distribution was "an officer of the Government, who superintended the "fulfillment of the contract by the *empresario*. He "ascertained the character of the colonists, allotted to "them and to the *empresario* their shares of land, and "for that purpose appointed surveyors, received returns "of survey, and executed the final titles."

In *Glenn vs. United States*, 13 How., 251, this Court considered the effect of a contract similar to the one relied upon in this case, except that it was considerably stronger in favor of the claimant. We cite it as a sufficient answer to appellant's whole theory of conditions subsequent:

One Clamorgan petitioned the proper authorities of

the province of Louisiana for a large grant on which to establish a manufactory of cordage, and to colonize a large number of persons from Canada who might cultivate hemp. The grant, which was made upon this petition, referred to the above considerations and contained the following words: "In virtue of this, I concede to him, for him and his heirs, the tract of land which he solicits, in the place and with the same boundaries that he prays for, provided that there is no injury to any one;" and then refers to a survey which the grantee is expected to make, and the families "which he is bound to cause to come from Canada."

The fact of the grant was thus stated by the Court in its opinion, page 256:

"The country was vacant and greatly needed popu-
"lation, which could only be drawn from abroad; and
"this population Clamorgan stipulated that he would
"supply and establish a colony from Canada on the
"land; that he would introduce cultivators of hemp
"and artisans skilled in the manufacture of cordage,
"and would grow hemp and make cordage to an extent
"so large as to be of national consequence. On the
"faith of these promises the grant was made."

Upon these papers alone, as in the present case, a title in fee to the land referred to was claimed, and there as here the case of *Arredondo*, 6 Peters, 691, was relied upon in support of the contention. But the Court readily distinguished between the two cases, as follows:

"But it is insisted that, forasmuch as a title vested in
"Clamorgan by the grant to him, even admitting that
"it was incumbered with conditions, still, as their per-
"formance was to happen subsequent to the vesting of
"the estate, the want of performance could only be
"taken advantage of by a proceeding instituted by
"Government for that especial purpose; nor could want
"of performance be set up as a defense in this suit.

"If the premises assumed were true, the conclusion
"would necessarily follow; and Arredondo's case is re-

" lied on in support of this position and as governing " the present case. That proceeding was founded on a " perfect title, having every sanction the Spanish Gov- " ernment could confer. * * * The subsequent " condition there relied on to annul the grant was ren- " dered immaterial, and, perhaps, impossible, by the " grantor himself, as this Court held ; and the grantee " discharged from its performance. But in Clamorgan's " case the conditions to occupy and cultivate were pre- " cedent conditions ; they addressed themselves to the " Governor-General, and their performance was required " in advance. Before any right existed in Clamorgan " to apply for a complete title, or even to have a public " survey preparatory to such application, he was bound " by his contract to establish his colony on the land ; " and furthermore, to set up his manufactory to make " cordage, and to supply it with hemp grown on the " land, unless these conditions were waived on the part " of the Spanish Government (p. 258). * * * A " promise of performance was the sole ground on which " the Spanish commandant made the concession ; and " actual performance was to be the consideration on " which a complete title could issue" (page 259).

Counsel for appellant place great reliance on the case of *Gonzales vs. Ross*, 120 U. S., 605, without perceiving that the reasoning on which the decision was based is entirely against them. There the record shows that there was an absolute grant of eleven leagues of land, made under the law of Coahuila-Texas of April 28th, 1832. The grant directed the commissioner appointed for the distribution of lands in the locality of the grant to place the grantee in possession of the land, and extend the corresponding title to the same. This the commissioner proceeded to do, and gave to the grantee the usual certificate of his proceedings as a *testimonio*, reciting that in compliance with the grant, and in accordance with the law, he extended the title ; and that he had classified the lands and had them surveyed, giving a detailed description of their boundaries ; and that he put the grantee in possession, with all the usual formalities prescribed by law and custom, in the pres-

ence of six witnesses, "so that in all form and right he, the said citizen Juan Gonzales, may at all times prove his rights to the said eleven *sitios* of land."

Nothing remained to be done in order to attach the title of Gonzales as a present grant to a specific piece of land, within the limits as to quantity permitted by the laws of Mexico.

The only conditions attached were the payment of certain installments of purchase money—one-fourth being paid in advance, and the remaining three-fourths to be paid in the second, third and fourth years. Whether these payments were made or were not made was not shown at the trial. Thereupon this Court said, at page 625:

"If not made, then there was a forfeiture which the "Government could enforce, either by judicial proceed-"ings, or, perhaps, by granting the land to other "parties."

The Court further said, at page 626:

"The extension of title by the commissioner, in these "Mexican grants, completed the title without any pat-"ent or other act of the Government, and notwith-"standing the imposition of conditions subsequent. If "the concession imposed conditions precedent, the case "would be different."

Upon the facts shown by the record in this case, the Court found that the only conditions attaching to the grant were conditions subsequent, viz.: the payment of deferred installments of purchase money; and that the Government had never taken any proceedings to enforce a forfeiture of the grant, or to grant the land to other parties; and therefore, of course, upon principles which are nowhere disputed, held the grant to be valid as against a third party. But if the title had stopped with the grant of an unlocated 11 leagues of land, without being followed by any location, delivery of posses-

sion, or extension of final title, does any one suppose the Court would have held it such that the claimant could maintain a suit upon it, without further action of the Government to attach it to specific land?

Aside from judicial decisions, the meaning and effect of these *empresario* contracts were well understood by the public in the country affected by them. Beales evidently understood it, and this is probably the reason why he never asserted any claim under his contract, although he lived forty-three years after the independence of Texas. Indeed, the idea that the Beales contract carried the title to sixty odd million acres of land seems not to have germinated until the $10,000,000 capital stock of the Interstate Land Company was offered to the public.

In Kennedy's History of Texas there is a full account of the practical operation of the colonization law under which this contract was made. He says in Volume 1, pages 336–7:

"By the law of the State of Coahuila and Texas of "the 24th March, 1825, the Governor was authorized to "accept proposals from *empresarios* (contractors) to "settle a certain number of families, within stipulated "limits, in the term of six years. The first step to-"wards a settlement was the presentation of a memo-"rial from the contractor or contractors, praying for "permission to colonize under the conditions of the "law, stating the number of families proposed to be in-"troduced, and defining the limits of the land on "which they desired to locate them. Usually, to "afford ample choice to settlers, a tract greatly ex-"ceeding the appropriations to be made (containing "often millions of acres)was indicated in the memorial, "and temporarily conceded by the Government (pp. "336–7). * * * The *empresario*, as the Spanish term "implies, was a 'contractor' and nothing more. He was "the individual who, taking advantage of the facilities "offered by the colonization laws, agreed with the Gov-"ernment to settle a certain number of families within the "bounds of a prescribed district, receiving a regulated "proportion of 'premium lands' in return for his ex-

"pense and trouble. When the immigrants had "obtained their several 'head rights,' and the *em-* "*presario* his premium, the residue included within the "bounds of the grant remained a portion of the public "domain." (pp. 340–341.)

Speaking of Austin's colony, he says (Vol. 1, p. 332):

"The only personal advantage he derived from "establishing the colony was from the 'premium lands,' "conceded to him by the Government in his capacity "of empresario."

In volume 2, pages 30–57, Kennedy gives the history of an attempted settlement by Beales, in 1833–34; but it was of an entirely different grant, viz., to John Charles Beales and James Grant (evidently the same one mentioned in the case of *Gonzales vs. Ross*), and it was situated on the Rio Grande, far south of the thirty-second parallel of north latitude. The first body of colonists—fifty-seven in number—embarked at New York, November 10, 1833; entered the Rio Grande grant, February 28, 1834; settled at Dolores, a short distance above Laredo on the Rio Grande, March 25, 1834, and abandoned the colony in June, 1834. This was about three hundred miles from the tract now claimed, at the nearest point.

For the purposes of this case, however, the question of conditions may be left out of consideration. Suppose they were, as appellant contends, conditions subsequent and were discharged by the operation of *vis major*. The most that can be said about the effect of this is, that it would be tantamount to full performance, and would entitle the contracting party to the same benefits which he would have obtained by performing the conditions. Any reasoning which attempts to show that when conditions attached to a contract are dispensed with, because they become impossible, the party

thus excused becomes thereby entitled to more than he could obtain by performance in full, we shall not attempt to follow.

Assuming, therefore, that Beales, within the six years term of his contract, was in the same position as if he had actually introduced 200 families: He was thereupon entitled to receive 53,710 acres of land, to be located somewhere within the designated district by an officer of the Government, whose province it was to survey his land, put him in possession, and extend to him the final title for the land so located. No such location has ever been made.

The claim, therefore, if anything, is a *float* for 53,710 acres of land, to be satisfied out of a tract of 60,000,000 acres. Within this territory the Mexican Government subsequently granted a specific tract to other parties, under whom the Maxwell Company holds, which grant has also been confirmed, located and patented by the United States.

Now this presents the precise case which this Court has several times decided, viz., an unlocated float, against a subsequent located grant of definite lands within the limits of the surplus territory. And it has invariably held that the grant for specific land is the superior title. The principle on which these decisions rest is that the control of locating floating grants remained with the Government; and that the right to say where the float should be located within the district assigned, necessarily included the right to say where it should *not* be located. Therefore, when a certain tract within this district is granted by the Government to other parties, that is equivalent to a determination that the float shall not be located in that place, and it is conclusive.

The reasoning is fully stated in the opinions, and we should content ourselves with quoting some of them as being entirely decisive of this case.

The first was the well-known case of *Fremont vs. The*

United States, 17 How., 542, and language of that decision pertinent to this question is sufficiently quoted in cases given below.

In *United States vs. Armijo*, 5 Wall., 444, the Court said:

"Where a grant was of a specific quantity within "exterior limits embracing a much larger quantity, "there was no obligation on the part of the former "Government, nor is there any obligation on the part "of the present Government, to allow the quantity to "be selected in accordance with the wishes of the "grantee. The duty of the Government is discharged "when the right conferred by the grant to the quantity "designated is attached to a specific and defined tract. "Under our system the right of the grantee to direct a "selection of the quantity granted is admitted, subject "only to the restriction that the selection be made in "one body and in a compact form. This right, we say, "is admitted, though strictly speaking it is not a right; "it is only a privilege given by the generosity of the "Government. The law of Mexico, as stated by "Galvan, was otherwise. It was as follows: 'No "'person, though his grant be older than others, can "'take possession for himself, or measure or set limits "'to his landed property, unless it is done by judicial "'authority, with the citation of all those who bound "'upon him; for whatever is done contrary to this "'will be null, of no validity or effect.' And to the "same purport is the language of this Court in the "case of *Fremont vs. United States:* 'Under the "'Mexican Government,' said the Court, 'the survey "'was to be made or approved by the officer of the "'Government, and the party was not at liberty to give "'what form he pleased to the grant. This precaution "'was necessary in order to prevent the party from "'giving it such a form as would be inconvenient to "'the adjoining public domain, and impair its value. "'The right which the Mexican Government, reserved "'to control the survey passed, with all other public "'rights, to the United States, and the survey must "'now be made under the authority of the United "'States, and in the form and divisions prescribed by "'law for surveys in California, embracing the entire "'grant in one tract.' The exercise of the right of

" selection given to the grantee is not permitted by the " political authorities, and, when a location is subject " to the control of the Courts, is never permitted by " them, so as to defeat the equitable prior rights of " others."

These were cases arising between the claimant and the Government, involving the policy of location as an original matter.

In the next case, (*Miller vs. Dale*, 92 U. S., 476–477) the principle was applied to a controversy between two individuals claiming under the two respective kinds of grants, and the Court said:

" Under these circumstances, the concessions being " without specific boundaries by which the quantity " embraced, when ascertained, could be identified, the " only rule which the Court can follow in actions at " law is to consider the one first located by an im- " proved survey as having appropriated the land cov- " ered by the survey. This rule was substantially rec- " ognized in one of the earliest cases which came " before this Court for consideration—the *Freemont* " case, reported in the 17th of Howard. The grant to " Alvarado, under which Freemont claimed, was for ten " leagues within exterior boundaries embracing a " much greater quantity; and while the Court held " that, as between the Government and the grantee, " the grant passed to him a right to the quantity of " land mentioned to be laid off by official authority in " the territory described, it said that, if any other per- " son within those limits had afterwards obtained a " grant from the Government by specific boundaries " before Alvarado had made his survey, the title of the " latter grantee could not be impaired by any subse- " quent survey of Alvarado. 'As between the individ- " 'ual claimants from the Government,' the Court " ' added: 'The title of the party who had obtained a " ' grant for the specific land would be the superior " ' and better one, for by the general grant to Alvarado " ' the Government did not bind itself to make no " ' other grant within the territory described until after " ' he had made his survey.' "

In the recent cass of *United States vs. McLaughlin*, 127 U. S., 128, this doctrine was reasserted with much emphasis, and by substituting the names of persons and localities, the opinion in that case might well be taken for an opinion in this. We quote some extracts from it:

"The Moquelamos grant belongs to that class which "may properly be called 'floats;' that is, grants of a "certain quantity of land to be located within the "limits of a larger area. Mexican grants were of three "kinds: (1) Grants by specific boundaries, where the "donee is entitled to the entire tract, whether it be more or "less; (2) grants of quantity, as of one or more leagues "within a larger tract described by what are called "'outside boundaries,' where the donee is entitled to "the quantity specified and no more; (3) grants of a cer- "tain place or *rancho* by name, where the donee is entitled "to the whole tract according to the boundaries given, "or, if not given, according to its extent as shown by "previous possession (*Higueras vs. U. S.*, 5 Wall., 827, "834). In the first and third kinds the claim of the "grantee extends to the full limits of the boundaries "designated in the grant or defined by occupation; but in "the second kind,—a grant of quantity only, within a "larger tract,—the grant is really a float, to be located "by the consent of the Government before it can attach "to any specific land, like the land-warrants of the "United States. A float may be entitled to location "either on any public lands in the United States, or "only in a particular State or Territory, or within a "more circumscribed region or district. Its character "remains the same. The present grant is one of this "kind. If it only extends to the Jack Tone road, as "we suppose, it is still largely in excess of the quantity "granted. If it extends, as the complainant insists, to "the Bear Mountain or the Sierra Nevada, the region "embraced would be immensely enlarged, comprising "over 50 square leagues in one case, and over 80 in "the other. Can it be that such an extensive region "was under interdict as reserved land, absolutely ex- "empt from disposition, even by Congress, during the "whole period covered by the litigation respecting the "validity of the grant, which, in the end, even if found

" valid, was only for the quantity of 11 square leagues?
" * * * A grant of 11 square leagues is made out
" of a country 70 or 80 miles in length, and from 6 to
" 10 in width, containing over 80 square leagues; and
" this whole 80 leagues is supposed to be retired from
" the disposable public domain for a period of years,
" no one knows how long. Does this look reasonable?
" One or two observations may be made calculated to
" show the precise question in a still stronger light.
" *First.* It is in the option of the Government (not of
" the grantee) to locate the quantity granted; and, of
" course, a grant by the Government of any part of the
" territory contained within the outside limits of the
" grant, only reduces by so much the area within
" which the original grantee's proper quantity may be
" located. If the Government has the right to say
" where it shall be located, it certainly has the right to
" say where it shall not be located; and it sells land to
" a third person at a place within the general territory of
" the original grant, it is equivalent to saying that the
" quantity due to the original grantee is not to be lo-
" cated there. In other words, if the territory com-
" prehended in the outside limits and bounds of a
" Mexican grant contains 80 leagues, and the quantity
" granted is only 10 leagues, the Government may dis-
" pose of 70 leagues, without doing any wrong to the
" original grantee. This was the Mexican law, and, of
" course, it is our law. *U. S. vs. Armijo*, 5 Wall., 444,
" 449. In practice, it is true, our authorities, in ad-
" ministering the public lands, have generally allowed
" the original grantee to make his own selection of the
" point where he will have his quantity located, pro-
" vided he has it all located together in one tract. But
" this is a matter of favor, and not a matter of right.
" If this were not so, the right of way granted for the
" railroads by Congress would be subject to question
" and litigation. There cannot be any doubt, however,
" of the validity of these grants. The cases which
" show the law on this subject are numerous; it is only
" necessary to refer to a few of them. The following
" may be consulted: *Fremont vs. U. S.*, 17 How., 542,
" 558, 565; *U. S. vs. Armijo*, 5 Wall., 414; *Hornsby*
" *vs. U. S.*, 10 Wall., 224, 234, 235; *Henshaw vs. Bis-*
" *sell*, 18 Wall., 255, 266, 267; *Miller vs. Dale*, 92
" U. S., 473, 476, 477; *Van Reynegan vs. Bolton*, 95

" U. S., 33, 36. According to this rule of law, though " the Moquelamos grant had been unquestionably " genuine and valid, the Government would have had " a right to dispose of the whole territory east of Range " 6, without infringing in the slightest degree the rights " of Pico, who would still have had his 11 leagues at " the western extremity of the territory."

There are a number of other arguments by which the the decision of the Circuit Court might be equally well sustained. But we are of opinion that all argument, beyond the mere statement of the case, is superfluous.

Respectfully submitted,

FRANK SPRINGER,
Counsel for Appellee.